REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

BULLETIN OF CASE LAW
July-December
2015

Volume II

Publisher:

Constitutional Court of the Republic of Kosovo

Editorial Board:

Mrs. Arta Rama-Hajrizi, President of the Constitutional Court
Prof. Dr. Ivan Cukalovic, Vice-President of the Constitutional Court
Mr. Almiro Rodrigues, Judge of the Constitutional Court
Prof. Dr. Snezhana Botusharova, Judge of the Constitutional Court
Mr. Milot Vokshi, Secretary General of the Constitutional Court
Legal Office, Constitutional Court

Contributors:

Mr. Malte Kirchner, Project Manager, GIZ
Mrs. Pranvera Ejupi- Hajzeraj, Project Coordinator, GIZ
Mr. Lavdim Krasniqi, Legal Expert
Premium Consulting

© 2016 Constitutional Court of Kosovo

Copyright:

No part of this edition may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system, without the prior written approval of the Constitutional Court of the Republic of Kosovo (hereinafter: the Constitutional Court), unless such copying is expressly permitted by the relevant copyright law.

Disclaimer:

According to Article 116.4 of the Constitution of the Republic of Kosovo, the decisions of the Constitutional Court are published in the Official Gazette of the Republic, which is the primary source for the decisions of the Constitutional Court. This Bulletin does not replace the primary source for the decisions of the Constitutional Court. In case of conflicts or inconsistencies between the decisions published in this Bulletin and the decisions published in the Official Gazette of the Republic of Kosovo, the latter shall prevail.

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 and Administrative 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 of the Constitutional Court.

REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Published by giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

BULLETIN OF CASE LAW

July-December 2015

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

This Bulletin is published by the Constitutional Court of the Republic of Kosovo in cooperation with "Project for Legal and Administrative Reform", implemented by Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) GmbH, with the support of German Federal Ministry for Economic Cooperation and Development (BMZ).

Table of contents

Foreword 11

No.1. KI146/14, Applicant Bekim Cakolli - Constitutional Review of Judgment PML.no. 160/2013 of the Supreme Court of 8 October 2013 13

No.2. KI09/15, Applicant, Ramë Dauti – Request for constitutional review of Judgment PML. no. 205/2014, of the Supreme Court of Kosovo, of 19 November 2014 18

No.3. KI132/14, Applicant Rrok Nikollprenkaj - Constitutional Review of Decision, P. no. 389/12, of the Municipal Court of Gjakova, of 21 August 2012 26

No.4. KI165/14, Applicant Bajram Ahmeti - Constitutional Review of Judgment Rev. no. 25/2012, of the Supreme Court of Kosovo, of 10 May 2013 32

No.5. KI174/14, Applicant Rrahim Pacolli - Constitutional review of Article 14 of Law no. 03/L-179 on the Red Cross of Kosovo 38

No.6. KI139/14, Applicant Mile Milosavljević - Constitutional Review of Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo, of 13 May 2014 45

No.7. KI04/15, Applicant Elvira Reçica - Constitutional Review of the Judgment Rev. No. 264/14 of the Supreme Court, of 4 November 2014 53

No.8. KI 144/14 and KI 156/14, Applicants Vilijamin Hajduković and Stanka Tus, Constitutional review of the non-execution of two decisions of the Housing and Property Claims Commission, namely Decision No. HPCC/REC/91/2007 of 19 January 2007, and Decision No. HPCC/REC/81/2006 of 11December 2006 62

No.9. KI61/14, Applicant Faik Tërnava - Constitutional Review of Judgment, Rev. no. 195/2013, of the Supreme Court of Kosovo of 10 January 2014 83

No.10. KI69/14, Bajram Zogiani - Constitutional Review of Judgment, Rev. no. 276/2013, of the Supreme Court of the Republic of Kosovo of 15 November 2013 93

No.11. KI180/14, Applicant Fehmi Pajaziti - Constitutional Review of Decision CPP. no. 5/2014, of the Supreme Court of Kosovo, of 9 September 2014 104

No.12. KI20/15, Applicant Non-Governmental Organization FINCA Kosovo- Constitutional Review of Judgment Rev. no. 205/2014, of the Supreme Court, of 14 October 2014 112

No.13. KI55/14, Applicant Baton Morina - Constitutional Review of Notification, KMLP. I. no. 1/14, of the Office of the Chief State Prosecutor of 7 March 2014 120

No.14. KI152/14 dhe KI153/14, Applicant Fatmir Pajaziti-Constitutional Review of the Judgment, P.m.l. No. 194/2013 of the Supreme Court of Kosovo dated 2 April 2014, Decision, PLK. No. 4/14 of the Panel for Conditional Release dated 28 April 2014 and Judgment, Pzd. No. 84/2014 of the Supreme Court of Kosovo of 5 August 2014 132

No.15. KI172/14, Applicant Afrim Gela - Constitutional Review of Judgment, Rev. No. 189/2014 of the Supreme Court of Kosovo, of 8 July 2014 143

No.16. KI179/14, Applicant Bejtullah Sogojeva - Constitutional Review of Judgment, Rev. No. 396/2012 of the Supreme Court of Kosovo of 11 September 2013 151

No.17. KI57/15, Applicant Rasim Rama - Constitutional review of Judgment, Pml. No. 61/2015 of the Supreme Court of the Republic of Kosovo of 26 March 2015 157

No.18. KI187/14, Applicant Met Gashi - Constitutional review of Judgment, Pml. no. 192/2014, of the Supreme Court, of 20 October 2014 166

No.19. KI167/14, Applicant NTP Unio Commerce, Zelqif Berisha, owner - Constitutional review of Judgment AC-I-13-0045-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 26 June 2014 174

No.20. KI168/14, Applicant Mabco Constructions and Eurokoha-Reisen - Constitutional review of the Judgment AC-I-13-0045-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 26 June 2014 193

No.21. KI142/14, Applicant Bajram Bajgora - Constitutional review of Judgment Ac. No. 1429/2014 of the Court of Appeal, of 7 July 2014 204

No.22. KI170/14, Applicant Adem Bajqinca - Constitutional Review of Judgment Rev. 533/2008, of the Supreme Court, of 9 February 2010 209

No.23. KI184/14, Applicant Maliq Demiri - Constitutional Review of the list of the Privatization Agency of Kosovo of the employees entitled to 20% proceeds from the sale of Socially Owned Enterprise "Ramiz Sadiku" 215

No.24. KI16/15, Applicant Dragomir Eraković - Constitutional review of Decision AC-I-14-0044 of the Appellate Panel of the Special Chamber of the Supreme Court, of 5 September 2014 222

No.25. KI49/15, Applicant Veli Kuçi - Constitutional Review of Judgment PML. no. 65/ 2015, of the Supreme Court of 26 March 2015 231

No.26. KI11/15, Applicant Ymer Bardhi - Constitutional review of Decision AC-I.-14-0233, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 1 December 2014 237

No.27. KI14/15, Applicant Milić Krstić - Constitutional review of Judgment GSK-KPA-A 284/13, of the Supreme Court of Kosovo - Appellate Panel of Kosovo Property Agency, of 2 December 2014 244

No.28. KI32/15, Applicant Shemdi Nishevci - Constitutional Review of Judgment Rev. no. 188/2014 of the Supreme Court, of 17 November 2015 251

No.29. KI15/15, Applicant Hysni Hoxha President of the Procurement Review Body – Request for legal interpretation of Article 100 of the Law on Public Procurement in the Republic of Kosovo 258

No.30. KI75/15, Applicant Hatixhe Cana-Kurti - Request for constitutional review of Judgment AC-I-14-0218-A0001-A0004, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 14 May 2015 264

No.31. KI98/14, Applicant Rasim Rashica - Constitutional review of Decision PPC. no. 39/2011, of the Supreme Court, of 5 August 2011 272

No.32. KI17/15, Applicant Ibrahim Bajrami - Constitutional Review of a Request on Inclusion in Proceedings of Privatization 280

No.33. KI24/15, Applicant Enver Basholli - Constitutional Review of Judgment GSP-KPA-A-158/13, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency Related Matters, of 19 March 2014 286

No.34. KI36/15, Applicant Sahit Ninaj - Constitutional Review of Decision of the Supreme Court, Rev. no. 378/2014, of 29 December 2014 294

No.35. KO107/15, Applicants Albulena Haxhiu and 23 other deputies - Constitutional review of Decision No. 05-V-139 of the Assembly of the Republic of Kosovo on approval of Amendment XXIV to the Constitution of the Republic of Kosovo, adopted on 3 August 2015 303

No.36. KI05/15, Applicant Reshat Osmani - Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, AC-I-14-0061, of 5 September 2014 324

No.37. KI18/15, Applicant "Iming" D.O.O. Rrustem Zogaj, owner - Constitutional Review of Decision AC-I-14-0357-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 5 February 2015 332

No.38. KI19/15, Arif Kryeziu - Constitutional Review of a Request on Inclusion in Proceedings of Privatization 345

No.39. KI31/15, Applicant Tomislav Ilić - Constitutional review of Decision Ka. no. 2/111/ 2015, of the Court of Appeal of Kosovo, of 4 February 2015 351

No.40. KI39/15, Applicant Fetije Haliti - Constitutional Review of Judgment ARJ-UZVP. no. 4/2015, of the Supreme Court of Kosovo, of 27 February 2015 358

No.41. KI08/15, Applicant Haki Hajdari - Constitutional Review of Judgment of the Court of Appeal of the Republic of Kosovo, PAKR 966/2012, of 11 September 2013 367

No.42. KI33/15, Applicant Mihane Ismajli - Constitutional review of the Judgment, SCEL-11-0065-C0068 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters, dated 13 May 2014.....375

No.43. KI185/14, Applicant Zoran Kolić - Constitutional review of Judgment PML 125/14, of the Supreme Court of the Republic of Kosovo, of 8 July 2014 383

No.44. KI46/15, Applicant Zejna Qosaj - Constitutional review of Judgment Rev. no. 17/2015 of the Supreme Court of the Republic of Kosovo, of 4 February 2014 392

No.45. KI29/15, Applicant Bardhyl Kameri - Constitutional review of Judgment Pml. no. 9/2015, of the Supreme Court, of 12 February 2015.....399

No.46. KI38/15, Applicant Kolë Puka - Constitutional review of Judgment PML.-KZZ. No. 170/2014 of the Supreme Court of Kosovo of 19 February 2015..... 406

No.47. KI47/15 and KI48/15, Applicants Beqir Koskoviku and Mustafë Lutolli - Constitutional review of Judgment AC-II-14-0057 of the Special Chamber of the Supreme Court of Kosovo, of 12 March 2015..... 415

No.48. KI79/15, Applicant Loresa Fetahu - Constitutional review of Judgment Pml. no. 83/2015 of the Supreme Court of the Republic of Kosovo, of 30 April 2015.....423

No.49. KI44/15, Applicant Hava Bajgora, Alban Bajgora and Sylejman Bajgora - Constitutional review of Decision no. 356-65493, of the Inspection Directorate, Construction Sector in the Municipality of Prishtina, of 20 March 2015..... 431

No.50. KI53/15, Heset Neziri- Constitutional review of Judgment Pml. no. 223/2014 of the Supreme Court of 26 November 2014..... 438

No.51. KI61/15, Islam Krasniqi - Constitutional review of Judgment A. A. no. 2/2014 of the Court of Appeal of Kosovo of 21 February 2014 448

No.52. KO 130/15, The President of the Republic of Kosovo – Concerning the assessment of the compatibility of the principles contained in the document entitled *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements"* with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo 456

No.53. KI121/14, Valdet Nikçi and others- Constitutional Review of Decision Rev. no. 21/14 of the Supreme of Kosovo of 3 April 2014 467

No.54. KI35/15, Applicant Sami Omura - Constitutional review of Decision Rev. no. 341/2014 of the Supreme Court of the Republic of Kosovo of 6 January 2015 475

No.55. KI28/15, Applicant Naser Dragusha and 4 other employees of the Kosovo Energy Corporation – Constitutional reassessment of Judgment Rev. No. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 May 2013 485

No.56. KI56/15, Applicant Qamil Haxhibeqiri - Constitutional review of Judgment Rev. no. 367/2014 of the Supreme Court of the Republic of Kosovo, of 20 February 2015 491

No.57. KI86/15, Applicant Armond Morina - Constitutional review of Decision Rev. E. no. 57/2014 of the Supreme Court of 17 November 2014 499

No.58. KI25/15, Applicant Faik Azemi - Request to return to previous situation the Resolution on Inadmissibility KI129/14, of the Constitutional Court, of 25 November 2014 507

No.59. KI77/15, Applicant Naser Foniqi - Constitutional Review of Decision KGJK/No. 18/2015 of Kosovo Judicial Council, of 11 March 2015 514

No.60. KI132/15, Applicant Visoki Decani Monastery- Request for constitutional review of two Decisions of 12 June 2015, Nos. AC-I-13-0008 and AC-I-13-0009, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters 519

No.61. KI21/15, Applicant Halim Ibrahimi - Constitutional Review of Judgment Rev. No. 179/2014 of the Supreme Court of the Republic of Kosovo of 8 October 2014 528

No.62. KI34/15, Applicant Avdullah Kurti - Constitutional review of Decision Ac. no. 1066/13 of the Court of Appeal of Kosovo of 24 November 2014 535

No.63. KI37/15, Applicant Rrahim Zeka - Constitutional Review of Judgment Rev. No. 306/2014 of the Supreme Court of Kosovo, of 16 December 2014 545

No.64. KI69/15, Applicant Enver Krasniqi - Constitutional review of Decision Rev. No. 305/2014 of the Supreme Court of Kosovo of 8 December 2014 552

No.65. KI78/15, Applicant Fatime Tosuni - Constitutional review of Judgment Rev. no. 318/2014 of the Supreme Court of Kosovo, of 19 January 2015 561

No.66. KI99/15, Applicant Axhi Thaçi - Constitutional Review of Judgment (SCEL-09-0009) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, of 12 November 2013 569

No.67. KI131/14, Applicant Agron Alaj - Constitutional review of Judgment Pml. no. 115/2014, of the Supreme Court, of 16 June 2014 575

No.68. KI173/14, Applicant Staja Savić - Constitutional review of Decision KPCC/D/C/264/2014 of the Kosovo Property Claims Commission, of 21 October 2014 584

No.69. KI177/14, Applicant Miodrag Janković - Constitutional Review of Decision U. Z -A. A. no. 6/2014, of the Supreme Court of Kosovo, of 21 July 2014. 594

No.70. KI83/15, Applicant Shefqet Mehmetukaj - Constitutional review of Decision E. Rev. no. 49/2014, of the Supreme Court of Kosovo, of 23 December 2014 603

No.71. KO 130/15, The President of the Republic of Kosovo – Concerning the assessment of the compatibility of the principles contained in the document entitled *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements"* with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo 612

No.72. Dissenting Opinion of Judge Bekim Sejdiu in the case KO 130/15 662

No.73. KI134/14, Applicant Sadik Thaqi - Complaint regarding the lack of investigation of the death his son 681

No.74. KI58/15, Applicant Islam Çerkini - Constitutional review of Judgment Rev. no. 210/2014 of the Supreme Court of Kosovo, of 19 February 2015 693

No.75. KI64/15, Applicant Sanija Bajrami - Constitutional review of Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo, of 16 December 2014 701

No.76. KI71/15, Applicant Miftar Ahmetaj - Constitutional Review of Decision CML. no. 5/2014, of the Supreme Court of Kosovo, of 23 December 2014 706

No.77. KI94/15, Applicant Lulzim Ramaj and Shahe Ramaj - Constitutional review of unspecified ruling of an unspecified authority 713

Index of Legal Terms 720

Index of Articles of the Constitution 736

Violation of Articles 31, 54 and 46 of the Constitution 740

Foreword

I have the special honor and pleasure, in the capacity of the President of the Court, to write this foreword for the fifth Bulletin of the Case Law of the Constitutional Court. The Bulletin has become a useful reference, frequently cited from those who work in the field of constitutional law. Once again, we have been highly dedicated to show some of the main results of our tireless work.

The present Bulletin edition contains a number of more special and more important cases, including the referral for a preventive constitutional control of the review of the compatibility of general principles of the document titled "*the Association of Serb Majority Municipalities in Kosovo – General Principles/ Main Elements*", with the spirit of the Constitution, Article 3 [Equality Before the Law] and Chapter II [Fundamental Rights and Freedoms], and Chapter III [The Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo.

The Court was requested to provide a constitutional review as to whether the principles and elements of the Association of Serb Majority Municipalities in Kosovo are compatible with the spirit of the Constitution, Article 3, paragraph 1 [Multi-ethnic Society], Chapter II [Fundamental Rights and Freedoms] and Chapter III [The Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo.

The Court also issued another important decision which is interrelated with the individual referrals where, based on constitutional judiciary viewpoint, the property matters and execution of property titles were addressed.

It is not excessive to highlight how much important it is that the future applicants and their legal representatives, who intend to file referrals with the Constitutional Court, by using this Bulletin, and previous Bulletins, can attentively examine the Decisions of the Court in the similar cases and consider whether their case can have any possibility of success in the light of similar cases. It should be clearly understood that in principle, the right to appeal cannot be denied to any applicant, but it would be better that one should become preliminarily familiar with the jurisprudence of the Court and objectively assess the success of their referral.

The purpose of publishing the Decisions of the Court in the Bulletin is to show to the public that the judges of the Constitutional Court take their decisions independently and in a completely transparent way, by applying the highest standards of human rights and constitutional justice.

This year, the Bulletin is published by the Court, whereas the German Agency for International Cooperation (GIZ) has continued its assistance to the preparations for publishingthe Bulletin, for which the Court expresses its gratitude.

Finally, I want to thank and express my special gratitude to the staff of the Court, whose work and support made it possible for the present Bulletin of Case Law of the Constitutional Court to see the light of publication.

Arta Rama-Hajrizi
President of the Constitutional Court

KI146/14, Applicant Bekim Cakolli - Constitutional Review of Judgment PML.no. 160/2013 of the Supreme Court of 8 October 2013

KI146/14, Resolution on Inadmissibility of 28 May 2015, published on 6 July 2015

Keywords: *Individual referral, criminal proceedings, right to fair and impartial trial, imprisonment sentence, qualification of criminal offense, out of time referral*

The District Court in Prishtina found the Applicant guilty and imposed on him an imprisonment sentence. The Supreme Court rejected the request for protection of legality as ungrounded. The Applicant filed a complaint with the Constitutional Court for violation of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution.

The Constitutional Court declared the Referral inadmissible because it was not submitted within the deadline of 4 (four) months, as provided by Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KI146/14
Applicant
Bekim Cakolli
Constitutional Review of Judgment PML.no. 160/2013
of the Supreme Court of 8 October 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Bekim Cakolli from Prishtina, who is currently serving imprisonment sentence in Dubrava Prison, represented by Mr. Bajram Tmava, lawyer from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The challenged decision is Judgment PML. no. 160/2013, of the Supreme Court, of 8 October 2013, by which the Supreme Court rejected the Applicant's request for protection of legality as ungrounded and upheld the Judgment of the District Court in Prishtina.

3. This Judgment was served on the Applicant on 10 November 2013.

Subject Matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 31 [Right to Fair and Impartial Trial].

Legal Basis

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

Proceedings before the Constitutional Court

6. On 2 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 6 November 2014, the President of the Court by Decision GJR. KI146/14 appointed Judge Kadri Kryeziu as Judge Rapporteur and by Decision KSH. KI146/14 appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 23 January 2015, the Constitutional Court informed the Applicant and the Supreme Court of Kosovo about the registration of the Referral. By this notification, the Constitutional Court requested the Applicant and the Municipal Court in Prishtina to submit a copy of the return paper with the date of receipt of the Judgment PML. no. 160/2013, of the Supreme Court.

9. On 18 February 2015, the Municipal Court submitted a copy of the return paper, indicating that the challenged Judgment of the Supreme Court of Kosovo was served on the Applicant on 10 November 2013.

10. On 25 February 2015 the Applicant submitted to the Court additional information whereby he alleges that his attorney B.T. has not defended him legally because during the sessions he did not allow him to speak.

11. On 15 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

12. On 31 May 2012, the District Court in Prishtina, [Judgment P. no. 412/2010] found the Applicant guilty of several criminal offenses and sentenced him to imprisonment.

13. On 26 September 2012, the Supreme Court of Kosovo [Judgment Ap. no. 378/2012], deciding upon the appeal of the Applicant (the accused) and of the District Public Prosecutor, approved the Applicant's appeal and modified the Judgment [P. no. 412/2010] of the District Court in Prishtina regarding the legal qualification.

14. Thereafter, the Applicant submitted to the Supreme Court of Kosovo a request for protection of legality, claiming substantial violation of the criminal law and requesting the modification of the appealed judgment.

15. On 8 October 2013, the Supreme Court of Kosovo [Judgment PML. no. 160/2013] rejected the Applicant's appeal as ungrounded. This Judgment was served on the Applicant on 10 November 2013.

Applicant's Allegations

16. The Applicant claims that by challenged decision were violated the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and it contains substantial violation of CPCK.

17. The Applicant requests the Court:

- *ANNULMENT of Judgment 412/2010 of the District Court in Prishtina, of 31.05.2012, Judgment Ap. no. 122/2012 of the Supreme Court of Kosovo, of 07.06.2012, Judgment PML. no. 160/2013 of 08.10.2013.*

- *To remand the criminal matter of the accused Bekim Cakolli for retrial and reconsideration to the Basic Court in Prishtina- Serious Crimes Department.*

Admissibility of the Referral

18. The Court notes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and 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) (c) of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if: (c) 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 [...]."*

21. The final Judgment [PML. no. 160/2013] of the Supreme Court of Kosovo, was rendered on 8 October 2013, and was served on the Applicant on 10 November 2013, whereas the Applicant submitted the Referral to the Court on 2 October 2014 i.e. more than 4 months after the judgment of the Supreme Court of Kosovo was served on him. Therefore, the Referral was filed out of time.

22. It follows that the Referral is inadmissible, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 49 of the Law on Constitutional Court and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 28 May 2015, 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 on the Constitutional Court;

IV. TO DECLARE this Decision effective immediately.

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

KI09/15, Applicant, Ramë Dauti – Request for constitutional review of Judgment PML. no. 205/2014, of the Supreme Court of Kosovo, of 19 November 2014

KI09/15, Resolution on Inadmissibility of 28 May 2015, published on 6 July 2015

Keywords: *Individual Referral, imprisonment sentence, criminal offence, abusing official position, interim measure, right to fair and impartial trial, rights of the accused, criminal report, manifestly ill-founded referral*

The Basic Court in Gjilan sentenced the Applicant to imprisonment of 40 days for the criminal offense of false criminal report. The decision of the Basic Court was upheld also by the higher instance courts. The Applicant filed a complaint with the Constitutional Court for violation of the rights of the accused and to a fair trial as guaranteed by Articles 30 and 31 of the Constitution in conjunction with Article 6 of the ECHR.

The Constitutional Court held that the Applicant was allowed to have counsel, to present his defense, to participate in the proceedings, to follow the course of the proceedings, to exhaust legal remedies and take other legally allowed procedural activities and that the proceedings in entirety were fair. The Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Rule 36 (2) (d) of the Rules of Procedure because the Applicant did not substantiate his allegations. The Court also rejected the request for interim measure because there was no *prima facie* case.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI09/15
Applicant
Ramë Dauti
Request for Constitutional Review of Judgment PML. no. 205/2014, of the Supreme Court of Kosovo, of 19 November 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
Arta Rama-Hajrizi, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Ramë Dauti with residence in Viti (hereinafter: the Applicant), who is represented by lawyer Mr. Rifat Abdullahi.

Challenged Decision

2. The Applicant requests the constitutional review of Judgment PML. no. 205/2014, of the Supreme Court of Kosovo, of 19 November 2014.

Subject Matter

3. The subject matter is the constitutional review of Judgment [PML. no. 205/2014] of the Supreme Court of Kosovo, of 19 November 2014, which allegedly violated the Applicant's rights and freedoms guaranteed by the Constitution, under: Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo, and the provisions of Article 6, and of Articles 2 and 4 of Protocol 7, of the European Convention on Human Rights (hereinafter: the ECHR).

4. At the same time, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an Interim Measure and to render a separate decision, by which the execution of the final judgment would be postponed until the constitutionality of the challenged judgment is reviewed.

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 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 29 January 2015, the Applicant submitted the Referral to the Court.

7. On 9 February 2015, the President of the Court, by Decision GJR. KI09/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI09/15, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 25 February 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

9. On 16 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral and the rejection of the request for Interim Measure.

Summary of Facts

10. On 26 August 2010, the Applicant filed criminal charges against a judge of the Municipal Court of Kamenica for the criminal offence of abusing official position or authority.

11. On 28 March 2011, the Municipal Public Prosecution Office in Gjilan rejected the criminal charges and at the same time filed an indictment against the Applicant for the criminal offense of making False Reports, under Article 306, paragraph 1 of the Criminal Code of Kosovo (hereinafter: the CCK).

12. On 28 April 2014, the Basic Court in Gjilan, Branch in Kamenica, rendered its Judgment [P. no. 462/2013], and sentenced the Applicant to imprisonment for 40 days.

13. The Applicant filed an appeal within the legal time limit with the Court of Appeal against Judgment [P. no. 462/2013] of the Basic Court in Gjilan, Branch in Kamenica, due to violation of the provisions of the CPC and erroneous determination of factual situation.

14. On 21 August 2014, the Court of Appeal, by Judgment [PA1. no. 802/14] rejected the Applicant's appeal as ungrounded with the reasoning that: *„According to this court's assessment the above mentioned allegations are not grounded. The challenged Judgment does not contain substantial violations of the provisions of criminal procedure under Article 384, paragraph 1, item 12 and paragraph 2 in conjunction with Article 370, paragraph 7 of the CPC or in relation to the allegations in the appeal or any other violation which this court notes,* ex officio*, pursuant to the provision of Article 394 of the CPC. The Judgment is specific and clear…".*

15. Within the legal time limit, the Applicant filed the request for protection of legality with the Supreme Court, against the Judgment [P. no. 462/2013], of the Basic Court in Gjilan-Branch in Kamenica, of 25 April 2014, and the Judgment [PA1. no. 802/2014] of the Court of Appeal of 21 August 2014.

16. On 19 November 2014, the Supreme Court rendered Judgment [PML. no. 205/2014] by which it rejected the Applicant's request for protection of legality as ungrounded, with the reasoning that: *"In relation to the substantial violations of the criminal procedure provisions under Article 384, paragraph 1, item 12 in conjunction with Article 370, paragraph 7 of the CPCK as well as Article 361, paragraph 2 of the CPCK, the request of the Applicant does not specify where and how these violations are manifested. However, the Judgments of the first and second instance courts are clear and concrete, their reasoning contain sufficient reasons pertaining to all relevant facts".*

Applicant's Allegations

17. The Applicant alleges that: *„the decisions of the regular courts against now the accused have violated his constitutional rights (the rights of the accused under Article 30, the Right to a Fair and Impartial Trial, under Article 31 of the Constitution of the Republic of Kosovo, and the provisions of Article 6, and of Articles 2 and 4 of Protocol 7 of the European Convention on Human Rights."*

18. The Applicant requests the Court:

"I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been violation of Article 30 [Rights of the Accused] and Article 31 [Right to Fair and Impartial Trial];

III. TO ANNUL Judgment PML. no. 205/2014, of the Supreme Court of Kosovo, of 19 November 2014, Judgment PA1. no. 802/14, of the Court of Appeal of Kosovo, of 21 August 2014 and Judgment P. no. 461/2013, of the Basic Court in Gjilan – Branch in Kamenica, of 25 April 2014;

IV. The case is remanded to the first instance court for retrial but to delegate the subject matter jurisdiction to a different basic court".

Admissibility of the Referral

19. 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 and further specified in the Law and Rules of Procedure of the Court.

20. In that 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".

21. 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."

22. Court also refers to Rules 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure, which provide:

"(1) The Court may consider a referral if:
[...]
(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,

[...], or

(d) the Applicant does not sufficiently substantiate his claim".

23. In the present case, the Applicant stated in the Referral that the Judgment [PML. No. 205/2014] of the Supreme Court of Kosovo, of 19 November 2014 violated his constitutional rights and freedoms under Article 30 (Rights of the Accused), and Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo, as well as the provisions of Article 6,and of Articles 2 and 4 of Protocol 7,of the ECHR.

24. In this regard, the Court reviewed the entire proceedings before the regular courts as a whole, and considers that the proceedings were conducted in such a manner that the Applicant was provided the right to a fair trial, which may be seen from the conclusion of the Supreme Court in its Judgment [PML. no.205/2014]:"*[...] the judgments of the first and second instance courts are clear and concrete, in their reason ingare give nsufficient reasons for all the relevant facts".*

25. The Court also notes that the Applicant was allowed to have counsel, to present his defense, to participate in the proceedings, to follow the course of the proceedings, to exhaust legal remedies, and take other legally allowed procedural activities, and from the reasoning of the Judgment [PML. no.205/2014] of the Supreme Court it follows that all his objections were ungrounded, and that they did not influence the legality of the decisions rendered on his criminal liability. The Applicant has not specified in his constitutional complaint any reasons from which it could be determined that he did not have sufficient time and possibilities to prepare a defense.

26. Based on the above, the Court considers that the Applicant's all egations of a violation of Article30 (Rights of the Accused) and Article31 (Right to Fair and Impartial Trial) of the Constitution, and of Article6, and of Articles 2and4 of Protocol7, of the ECHR, are ungrounded.

27. The Court recalls that Article 53 of the Constitution (Interpretation of Human Rights Provisions) provides that: *"human rights and freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights"*.

28. 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. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, case *Garcia Ruiz v. Spain [GC],* No. 30544/96, ECHR, Judgment of 21 January 1999; see also Resolution on Inadmissibility in case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility, of 16 December 2011).

29. 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 has had a fair trial (see, *inter alia,* case *Edwards v. United Kingdom*, No. 13071/87, European Commission on Human Rights, of 10 July 1991).

30. Therefore, the Court considers that the Applicant did not substantiate his allegations, nor has he submitted any *prima facie* evidence indicating a violation of his rights guaranteed by the Constitution and the ECHR (See, case no. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Syla,* Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision of the Court of Appeal of Kosovo, CA. no. 2129/2013, of 5 December 2013, and Decision of the Court of Appeal of Kosovo, CA. no. 1947/2013, of 5 December 2013).

Assessment of the request for Interim Measure

31. The Court notes that the Applicant requests the Court to impose an Interim Measure and to render a separate decision, by which the execution of the final judgment would be postponed, until the constitutionality of the challenged judgment is reviewed.

32. In order for the Court to impose an Interim Measure, pursuant to Rule 55 (4) of the Rules of Procedure, the Court 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.

[…]"

33. As concluded above, the Referral is inadmissible, and therefore there is no prima facie case for the imposition of the Interim Measure. For these reasons, their quest for Interim Measure is to be rejected.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and 36 (2), 55 (4) (a) and 56 (2) of the Rules of Procedure, on 28 May 2015, 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 on the Constitutional Court;

IV. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Prof. Dr. Enver Hasani

KI132/14, Applicant Rrok Nikollprenkaj - Constitutional Review of Decision, P. no. 389/12, of the Municipal Court of Gjakova, of 21 August 2012

KI132/14, Resolution on Inadmissibility of 1 June 2015, published on 9 July 2015

Keywords: *individual referral, criminal report, criminal offence, grievous bodily harm, unlawful deprivation of liberty, out of time referral*

The Municipal Court in Gjakova, rejected the Applicant's claim filed against several police officers as inadmissible. The Applicant submitted a complaint to the Constitutional Court of the Republic of Kosovo, alleging that he suffered severe injuries from the beating of police officers.

The Constitutional Court declared the Referral inadmissible because it was submitted after the deadline provided by Article 49 of the Law and Rule 36 (1) (c) Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI132/14
Applicant
Rrok Nikollprenkaj
Constitutional Review of the Decision, P. nr. 389/12, of the Municipal Court of Gjakova, dated 21 August 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Referral is submitted by Mr. Rrok Nikollprenkaj (hereinafter: the "Applicant"), residing in village Novosella e Epërme, Municipality of Gjakova.

Challenged decision

2. The Applicant challenges the Decision, P. nr. 389/12, of the Municipal Court of Gjakova, dated 21 August 2012, which was served to him on 21 June 2013.

Subject matter

3. The Applicant did not specify which constitutional provisions have allegedly been violated by the challenged decision. In his referral the Applicant states "*I seek my rights whereas I have been subject of mockery for almost 5 years by four persons in question and by the judiciary*." The Applicant also claims that there has been "*violation by the authority of the Prosecutor's office and the judge, following the case of 25 April 2010; 26 April 2010 deliberately avoided the case*

during my detention on remand, accusing me with the purpose to imprison me and close the case."

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 28 August 2014, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 5 September 2014, the President of the Constitutional Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 15 September 2014, the Applicant was notified of the registration of the Referral.

8. On 16 April 2015, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 25 April 2010 the four police officers in question arrested the Applicant.

10. According to the Applicant, during the arrest he was beaten by these police officers and consequently suffered severe brain injuries.

11. On 26 April 2010, the Municipal Court of Gjakova rendered a Decision (Hp.No. 32/2010) against the Applicant for criminal offence of attacking official persons performing official duties (Art. 317.2 of the Provisional Criminal Code, PCCK). By that Decision a measure of attendance at the police station was imposed to the Applicant. The further status of this case is unknown.

12. On 5 October 2010, the Municipal Public Prosecutor's Office in Gjakova, notified the Applicant that the investigation against four

police officers for the criminal offences: 1) grievous bodily harm, 2) unlawful deprivation of liberty, and 3) mistreatment in exercising duties was terminated. The Applicant was notified that he could undertake a criminal prosecution though a private charge in accordance with Article 62.2 of PCCK.

13. On 22 March 2011, the Applicant submitted a private charge to the Municipal Court in Gjakova, against the four police officers for four criminal offences: 1) grievous bodily harm, 2) unlawful deprivation of liberty, 3) mistreatment in exercising duties, and 4) torture.

14. That charge was rejected on 15 July 2011 by Decision (P no 275/11) of the District Court in Peja. The justification was that the Applicant is not an authorized prosecutor for these four criminal offences which prosecution is under authority of the State prosecutor.

15. The Applicant did not appeal the Decision of the District Court of Peja.

16. On 16 August 2012, the Applicant filed a private charge against the four police officers for the criminal offences: 1) grievous bodily harm, 2) unlawful deprivation of liberty, and 3) mistreatment in exercising duties.

17. On 21 August 2012, his private charge was rejected and criminal proceedings terminated by Municipal Court of Gjakova Decision, P.no.389/12. It stated in the reasoning that the Applicant submitted his motion "*after 1 year, 10 months and 8 days, the Court rejected the private prosecution and terminated the criminal proceedings ...based on Article 62. 1 and 2 of PCCK and Article 316 par. 2 of PCCK*." The Applicant did not challenge this decision.

Applicant's allegations

18. The Applicant alleges that during the arrest he was beaten by the four police officers and consequently suffered severe brain injuries. He also stated: "*I Rrok Nikoll Penkaj, pursuant to my abilities, continued with the criminal report, however the Court terminated the proceedings and due to health reasons I did not understand...*"

Admissibility of the Referral

19. 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.

20. 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".*

21. 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 (...)".*

22. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provide:

> *"(1) The Court may only deal with Referrals if:*
>
> ...
>
> *c) 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 case file, the Court finds that the Applicant filed his referral on 28 August 2014, while the last decision of the Municipal Court of Gjakova (P. nr. 389/12) was adopted on 21 August 2012 and served on him on 21 June 2013.

24. Thus, 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) c) of the Rules of Procedure.

25. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) c) 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)".

26. Therefore, the Court concludes that the Referral is filed 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) c) of the Rules of Procedure, on 1 June 2015, 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 20.4of the Law;

IV. TO DECLARE this Decision effective immediately.

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

KI165/14, Applicant Bajram Ahmeti - Constitutional Review of Judgment Rev. no. 25/2012, of the Supreme Court of Kosovo, of 10 May 2013

KI165/14, Resolution on Inadmissibility of 22 June 2015, published on 9 July 2015

Keywords: *Individual Referral, legal effect of decisions, right to fair and impartial trial, judicial protection of rights, right to work and exercise profession, inadmissible referral*

In this case, the Applicant filed a referral alleging that the regular courts violated the right to fair trial and the right to work and exercise profession. However, the Constitutional Court found that the Applicant had already submitted an identical Referral, which was declared inadmissible as manifestly ill-founded. The Court found that it has already rendered a decision on the subject matter and that this Referral does not contain sufficient grounds for rendering a new decision.. The Referral was declared inadmissible in accordance with Article 116.1 of the Constitution, Rule 63 (1) and Rule 36 (3) (d) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KI165/14
Applicant
Bajram Ahmeti
Constitutional Review of Judgment Rev. no. 25/2012,
of the Supreme Court of Kosovo, of 10 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Mr. Bajram Ahmeti with residence in Prishtina (hereinafter: the Applicant), who is represented by Mr. Ilaz Qerkinaj, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 25/2012, of the Supreme Court, of 10 May 2013.

3. The Court has already rendered a decision on this matter in case KI163/13, in which as Applicants appear *Naser Dragusha and 6 other employees* (among whom is the Applicant) of Kosovo Energy Corporation(hereinafter: KEK).The Resolution on Inadmissibility in Case KI163/13 was rendered by the Court on 23 June 2014.

Subject matter

4. The subject matter is the constitutional review of the Judgment [Rev. no. 25/2012] of the Supreme Court, of 10 May 2013, which allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair

and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

Legal basis

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

Proceedings before the Constitutional Court

6. On 10 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 December 2014, the President of the Court, by Decision GJR. KI165/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI165/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

8. On 17 December 2014, the Court notified the Applicant and the Supreme Court of registration of the Referral.

9. On 6 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 10November 2014, the Applicant filed ReferralKI165/14, in which, as new facts and evidence, he submitted to the Court only the letter of the EULEX Mission,Ref: 2014-COS-1242, of 2 October2014.

11. In the letter [Ref: 2014-COS-1242] of 2 October 2014, of the EULEX Mission it was stated: *„that the Constitutional Court has already considered the Applicant's case and on this the Court rendered a decision on 23 June 2014, which was registered as KI163/13"*.

12. In fact, on 18 October2013, the Applicant together with Naser Dragusha and five other KEK employees submitted a Referral to the Court, which the Court registered under the numberKI163/13.In the Referral they challenged the same Judgment of the Supreme Court[Rev. no.25/2012of 10 May2013].

13. Mean while, on 23 June 2014, the Court declared the Referral KI163/13 in admissible because it was manifestly ill-founded (Case KI163/13, Resolution on in admissibility, 23 June 2014).

14. The facts and decisions of the regular courts, which the Applicant submitted in this new ReferralKI165/14, have already been considered inCaseno.KI163/13, as it was decided in the Resolution on Inadmissibility, of 23 June2014, and accordingly the decisions that have already been subject of reviewing CaseKI163/13 will not be reconsidered by the Court.

Applicant's allegations

15. In the new Referral KI165/14, the Applicant insists that the challenged Judgment violate his rights guaranteed by Article31 [Right to Fair and Impartial Trial], Article49 [Right to Work and Exercise Profession] and Article54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

16. The Applicant further alleges that the regular courts have violated his constitutionally guaranteed rights, namely his right to payment of personal income.

17. In the conclusion of his Referral, the Applicant requests the Court to enable him to exercise his right to the difference insalarywhichheis entitled to.

Admissibility of the Referral

18. The Court first examines whether all admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure, have been met.

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

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

20. In addition, the Court refers to Rule 63 (1) of the Rules of Procedure, which provides:

    The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

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

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

(...)

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

22. The Court considers that the facts and allegations raised by the Applicant in his new Referral do not provide sufficient to relevant grounds or reasons for a new decision (see the case of the Constitutional CourtKI02/14, Applicant Hamdi Ademi, Resolution on Inadmissibility of 26 May2014).

23. In fact, the Court wishes to recall that it has already dealt with the abovementioned matter in case no. KI163/13, *Naser Dragusha and 6 other KEK employees*, Resolution on Inadmissibility, rendered on 23 June 2014. In its Resolution, the Court declared the Referral inadmissible as manifestly ill-founded, since the facts presented by those Applicants did not in any way justify their allegations of violation of the constitutional rights and that the Applicants did not sufficiently substantiate how and why the Judgment of the Supreme Court violated their rights guaranteed by the Constitution.

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

25. Accordingly, pursuant to Article 116.1 of the Constitution, Rule 63 (1) and Rule 36 (3) (d) of the Rules of Procedure, the Court concludes that this Referral must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 116.1 of the Constitution, Rule 63 (1) and Rule 36 (3) (d) of the Rules of Procedure, in the session held on 22 June 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. This Decision is effective immediately.

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

KI174/14, Applicant Rrahim Pacolli - Constitutional review of Article 14 of Law no. 03/L-179 on the Red Cross of Kosovo

KI174/14, Resolution on Inadmissibility of 22 June 2015, published on 9 July 2015

Keywords: *Individual referral, inadmissible referral, interim measure, actio popularis, the legal effect of decisions*

In this case, the Applicant requested the Court to annul Article 14, item 1.7 of the Law Nr. 03/L-179, on the Red Cross of the Republic of Kosovo as unconstitutional. The Applicant also requested to impose an interim measure.

The Constitutional Court concluded that the Constitution does not provide for an *actio popularis*, allowing individuals to complain in the abstract, regardless of their specific legal interest in the matter. The Court also recalled that this case constituted an adjudicated matter and it has been already decided. The Court rejected the interim measure because there was no *prima facie* case.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI174/14
Applicant
Rrahim Pacolli
Constitutional review of Article 14 of
Law no. 03/L-179 on the Red Cross 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 and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Rrahim Pacolli with residence in Prishtina (hereinafter: the Applicant), who is the Director of"The Insurance Associationof Kosovo".

Challenged decision

2. The Applicant requests the constitutional review of Article 14of Law No. 03/L-179on the Red Cross of Kosovo, which was adopted by the Assembly of Kosovo on 10June 2010, promulgated by Decree of the President of the Republic of Kosovo, no. DL-025-2010 on 2 July 2010 and published in the Official Gazette on 20 July 2010.

3. The Constitutional Court (hereinafter: the Court) notes that it has already decided on the same subject matter in CaseKI118/10, where the Applicant was "The Insurance Association of Kosovo."In that Case, on13 December2010, the Court rejected the request for the imposition of an interim measure and, on 23 May2011, rendered a Resolution on Inadmissibility. The present Applicant, Mr. Rrahim Pacolli, is the Director of that same Insurance Association.

Subject matter

4. The Applicant alleges that the challengedArticle14 of the Law is contrary to Article3 [Equality before the Law], Article10 [Economy], Article24 [Equality before the Law] and Article49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo.

5. The Applicant also requests that the Court imposes an interim measure prohibiting the implementation of Article 14 from the date of submission of the Referral until the Court renders a merit based decision on the matter.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of 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

7. On 2 December 2014 the Applicant submitted the Referral to the Court.

8. On 17 December 2014 the President of the Court, by Decision GJR. KI174/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI174/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

9. On 23 December 2014 the Court notified the Applicant and the Assembly of the Republic of Kosovo of the registration of the Referral.

10. On 3 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 2 December 2014 the Applicant filed Referral KI174/14 with the Court alleging a violation of the Constitution.

12. However, on 26 November 2010 “the Insurance Association of Kosovo” submitted an identical Referral to the Court, challenging the

same Article of the Law on the Red Cross (Article 14 of the Law) and requesting the Court to impose an interim measure to suspend the challenged Article of the Law, until the decision on the case would have been rendered.

13. In addition, the Insurance Association alleged that the challenged Article of the Law violated Articles 3 [Equality Before the Law], Article 10 [Economy], Article 24 [Equality Before the Law] and Article 49[Right to Work and Exercise Profession].

14. In that case, on 13 December2010, the Court rejected the Insurance Association's request for the imposition of an interim measure on the grounds that: "*One of the tests for the granting of interim measures is whether unrecoverable damages will be suffered. If the Constitutional Court ultimately finds that Article 14 is unconstitutional then any damage suffered by either the Applicant can be calculated and if necessary a refund can be ordered to be made by the appropriate Court. There is nothing unrecoverable about the damage that is suffered. The Applicant does not make the case that it, IIlyria, Siguria and Sigkos Insurance Companies or any other insurance company will go out of business by virtue of the imposition of the 1 % charge. There are therefore no grounds, on that basis, to grant the Interim Measure requested.*"

15. On 23 May 2011 the Court rejected the Insurance's Referral in case KI118/10 as inadmissible, pursuant to Article 113.7 of the Constitution. It also dismissed the Applicant's request for the imposition of an Interim Measure.

Applicant's allegations

16. The Applicant considers that Article 14 of Law no.03/L-179 on the Red Cross, adopted by the Kosovo Assembly, is unconstitutional in its entirety and is contrary to Articles3, 24and 49 of the Constitution.

17. The Applicant requests from the Court:

"[...]

a) To approve the Referral for protection of constitutionality and legality of the Insurance Association of Kosovo.

b) To annul Article 14 of Law no. 03/L-179 on the Red Cross of the Republic of Kosovo as unconstitutional.

c) *To impose an interim measure, to prohibit the implementation of Article 14 of Law No. 03/L-179 on the Red Cross of Republic of Kosovo from the date of the submission of this Referral until the Constitutional Court of the Republic of Kosovo renders a decision on the merits of this matter which is the subject of the proceedings."*

Admissibility of the Referral

18. The Court first examines whether all admissibility requirements have been met, laid down in the Constitution and further specified in the Law and Rules of Procedure.

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

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

20. In addition, the Court also refers to Rule 63 (1) of the Rules of Procedure, which provides:

"The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."

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

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

[...]

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

22. The Court recalls that it has already dealt with the subject matter of the present Referral in CaseKI118/10, in which the Applicant was "The Insurance Association of Kosovo". On 23 May2011 it rejected that Case as being manifestly ill-founded, because the Constitution of Kosovo does not provide for an *actio popularis*, allowing individuals to complain in the abstract, regardless of their specific legal interest in the matter.

23. Therefore, the Insurance Company in CaseKI118/10could not be considered as an authorized party, which may initiate constitutional

issues in the abstract in relation to the constitutional review of Article 14 of Law 03/L-179, by requesting to obtain a legal remedy on behalf of the collective interest.

24. In these circumstances, the Court considers that it has already decided on the subject matter of the present Referral which does not provide any ground fora new decision.

25. Therefore, in accordance with Article116.1of the Constitution, Rules 63(1) and36 (3) (d) of the Rules of Procedure, the Court concludes that the Referral must be declared inadmissible.

Assessment of the request for interim measures

26. The Court notes that the Applicant in the Referral requests from the Court to impose an interim measure prohibiting the implementation of Article 14of Law no. 03/L-179 on the Red Cross of the Republic of Kosovo, from the date of the submission of the Referral until the decision on the merits of the Constitutional Court, is rendered on the matter which is the subject of the proceedings.

27. In order to grant the request for an interim measure, pursuant to Rule 55 (4) of the Rules of Procedure, the Court 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."

28. As concluded above, the Referral is inadmissible, and therefore there is no prima facie case for granting an interim measure. For these reasons, the request for interim measure smust be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 55 of the Rules of Procedure, in the session held on 22 June 2015, unanimously:

DECIDES

I. TO REJECT the Referral as Inadmissible;

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

III. This Decision is effective immediately.

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

KI139/14, Applicant Mile Milosavljević - Constitutional Review of Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo, of 13 May 2014

KI132/14, Resolution on Inadmissibility of 3 July 2015, published on 14 July 2015

Keywords: *Individual referral, civil procedure, right to fair trial, right to property, contract on life endowment, manifestly ill-founded referral*

The Municipal Court in Ferizaj rejected as ungrounded the statement of claim of the Applicant regarding the annulment of the contract on life endowment. The courts of higher instances adopted and upheld the legal position of the first instance court. The Applicant appealed to the Constitutional Court for violation of the right to fair trial and the right to property.

The Constitutional Court found that the regular courts reasoned their decisions in particular, the issue of the contract on life endowment. The Constitutional Court also reiterated that the issues of legality and of the facts are within the scope of the regular courts. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI139/14
Applicant
Mile Milosavljević
Constitutional Review of Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo, of 13 May 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Mile Milosavljević (hereinafter: the Applicant), represented by Mr. Bekim Sylejmani, lawyer from Shterpce.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo, of 13 May 2014, in conjunction with Decision CA. no. 2777/2012, of the Court of Appeal of Kosovo, of 12 February 2014 and Judgment C. no. 50/2010, of the Municipal Court in Ferizaj-Branch in Shterpce.

3. Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo was served on the Applicant on 23 June 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which *"allegedly is unfair because it denied the Applicant's right to fair and impartial trial and the right to property"*.

Legal basis

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

Proceedings before the Constitutional Court

6. On 16 September 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 7 October 2014, the President of the Court, by Decision no. GJR. KI139/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI139/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović (members).

8. On 22 October 2014, the Applicant was notified on the registration of Referral and a copy of the Referral was submitted to the Supreme Court of Kosovo.

9. On 2 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

10. On 26 June 2015, the mandate of Judge Rapporteur Kadri Kryeziu and of the President of the Court prof. dr. Enver Hasani had ended. This resolution is therefore signed by the President of the Court and the Presiding Judge of the Review Panel in accordance with Rule 57 (7) of the Rules of Procedure.

Summary of facts

11. On 17 June 2010, the Applicant's father B. M. concluded a contract on life endowment with the third party S. M., and the latter was certified in the Municipal Court in Ferizaj-Branch in Shterpce.

12. On an unspecified date, the Applicant filed a claim with the Municipal Court in Ferizaj-Branch in Shterpce with the request to annul the contract on life endowment, concluded between the Applicant's father B. M. and the third party S. M.

13. On 30 September 2011, the Municipal Court in Ferizaj-Branch in Shterpce, by Judgment C. no. 50/2010 established that:

> *"The statement of claim of claimant Milosavljevic from village Jazince, Municipality of Shterpce, the residence in Vrhnik of Slovenia, against the respondent Suzana Milosavljevic from village Jazince, Municipality of Shterpce is REJECTED AS UNGROUNDED and the Contract on life endowment between Bogoljub Milosavljevic from village Jazince Municipality of Shterpce and now the respondent Suzana Milosavljevic from village Jazince, Municipality of Shterpce, concluded on 30.10.2008 and certified in the Municipal Court in Ferizaj - Branch in Shterpce Nd. no. 120/10 of 17.06.2010 is UPHELD."*

14. On an unspecified date, the Applicant filed an appeal with the Court of Appeal of Kosovo.

15. On 12 February 2014, the Court of Appeal of Kosovo, by Decision Ca. no. 2777/2012 established that:

> *"The appeal of Mileta Milosavljevic from village Jazince, Municipality of Shterpce is REJECTED as ungrounded, while the Judgment C. no. 50/2010 of the Municipal Court in Ferizaj, Branch in Shterpce, of 30.09.2011, is UPHELD".*

16. On an unspecified date, the Applicant filed a revision with the Supreme Court of Kosovo.

17. On 13 May 2014, the Supreme Court of Kosovo, by Judgment Rev. no. 124/2014 established that:

> *"The revision of claimant, filed against the Judgment Ac. no. 2777/2012, of the Court of Appeal of Kosovo, Prishtina, of 12.2.2014, is rejected as ungrounded".*

18. In the abovementioned Judgment, the Supreme Court of Kosovo, reasoned:

> *"Setting from such a situation of the matter, the Supreme Court of Kosovo, found that the lower instance courts, determined correctly and completely factual situation, and correctly applied the contested procedure provisions and the material law, when they found that the claimant's statement of claim is ungrounded. The Judgment of the first instance court and of the second instance court contain sufficient reasons for relevant facts, for fair*

adjudication of this legal matter, which are recognized by the court of revision, too.

The Supreme Court of Kosovo assessed as ungrounded the abovementioned allegation in the revision that all the goods benefited by the respondent under the contract on life endowment, originate from the criminal offence pursuant to the Judgment P. no. 86/12 (which judgment was submitted together with the revision), since the party in the contract for life endowment as person receiving the maintenance and person giving the maintenance may be every natural person that has the capacity to conclude the contract according to general rules of the civil law and is not limited only to persons with family relations, or persons who have mutual obligations. Therefore, according to the assessment of this court of revision, the fact that the criminal procedure was conducted, regarding the annulment of the marriage between the person receiving the maintenance and here the respondent as the person receiving the maintenance (since the latter concluded the marriage before the parallel bodies), is not a legal ground for annulment of the contract on life endowment, because it is not legal requirement that they are spouses. This Court added that the contracting parties agreed on the essential component parts of the contract (Article 26 of LOR), by stating their own will freely and seriously, in a manner that they have legalized the contract in the Court, according to the provided legal procedure, therefore the allegation mentioned in the revision that the material law was applied in an erroneous manner is ungrounded."

Applicant's allegations

19. The Applicant addresses the Court: *"... the Constitutional Court of the Republic of Kosovo finds that by final Judgment Rev. no. 124/2014, of the Supreme Court of Kosovo, of 13.05.2014 and by the previous judgments were violated the Constitution and the applicable law, the property right, equality before law, fair and impartial trial to the detriment of the appellant since in all procedural actions taken by the court was not determined the fact that this matter as of the beginning was a result of the criminal offense of falsifying the documents (marriage) from which originated all other legal consequences, which were not correctly and lawfully assessed by regular courts*".

20. The Applicant also requests from the Court: *"We also request from the Constitutional Court of Kosovo, as the last instance, to annul the Judgment of the Supreme Court of Kosovo, the Decision of the Court of Appeal and the Judgment of Basic Court in Ferizaj - Branch in*

Shterpce and the matter be remanded for impartial retrial and based on evidence in order to annul the contract of the life endowment".

Admissibility of the Referral

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

22. Regarding 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."

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. The Court also refers to Rule 36 (2) (c) of the Rules of Procedure, which provides:

    "(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

    ...

    (c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution".

25. With respect to the allegations raised by the Applicant, the Court considers that the Supreme Court has elaborated and reasoned well on: i) who are the subjects that have the capacity to conclude the contract for life endowment, ii) the relationship that is created between the subjects that conclude the contract for life endowment, iii) the manner how this created relationship by the contract for life endowment was legalized, and iv) the reasons why the Applicant's allegation regarding the illegality of the contract for life endowment is unfounded.

26. Moreover, regarding the Applicant's allegations that *"the regular courts have not assessed in a correct and lawful manner"*, the Court considers that it is not its role to assess itself the facts which have led the regular courts to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of fourth instance, which would be to disregard the limits imposed on its jurisdiction (see case *Kemmache v. France,* No. 17621/91, ECHR, Judgment of 24 November 1994, para. 44).

27. The Court also considers that the Applicant's allegations raise questions of legality and assessment of facts about what is in fact, under the Constitution, the scope and prerogative of the regular courts.

28. The Court emphasizes that it is not its task to deal with errors of fact of law (legality) allegedly committed by the regular courts, when assessing the evidence or applying the law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In the case at hand, the Applicant's allegations do not raise questions of constitutionality.

29. The Constitutional Court recalls that it is not a fact-finding Court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts, 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, ECHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

30. Moreover, the Referral does not indicate that the regular courts have acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of 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 was taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

31. 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] and Article 46 [Protection of Property] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005)·

32. In these circumstances, the Applicant has not substantiated his allegation of a violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, because the facts presented by him do not show in any way that the regular courts have denied him the rights guaranteed by the Constitution.

33. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (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 (2) (c) of the Rules of Procedure, on 3 July 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Arta Rama-Hajrizi

KI04/15, Applicant Elvira Reçica - Constitutional Review of the Judgment Rev. No. 264/14 of the Supreme Court, of 4 November 2014

KI04/15, Resolution on Inadmissibility of 2 July 2015, published on 29 July 2015

Keywords: *Individual Referral, administrative procedure, primary and secondary education, equality before the law, right to fair trial, manifestly ill-founded referral*

The Municipal Court in Lipjan rejected the Applicant's statement of claim, to be assigned as a teacher of history. Higher instance courts adopted and upheld the position of the first instance court. The Applicant filed appeal with the Constitutional Court for violation of the right to a fair trial and equality before the law.

The Constitutional Court noted that the Applicant is mainly unsatisfied with legal qualification of the facts and the law applied by the regular courts, which also provided a reasoned response to all central issues of the Applicant's statement of claim. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded and in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI04/15
Applicant
Elvira Reçica
Constitutional Review of the Judgment Rev. No. 264/14 of the Supreme Court, of 4 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mrs. Elvira Reçica from village Llugaxhi, Municipality of Lipjan (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 264/14 of the Supreme Court of 4 November 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the abovementioned Judgment of the Supreme Court. The Applicant considers that she was denied the right to administrative proceedings and the right to work in the proceedings before the regular courts. Thus, Articles 4, 24 and 34 of the Constitution 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 No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the

Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 14 January 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 9 February 2015 by Decision GJR. KI04/15 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date by Decision KSH. KI04/15 the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 25 February 2015 the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. On 26 June 2015, by Decision GJR.KI04/15 the President of the Court appointed Judge Arta Rama–Hajrizi, as member of the Review Panel, replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on 26 June 2015.

9. On 2 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. The Applicant during the period from 2001 to 2006 was employed in capacity of a teacher of history in the primary school „Emin Duraku“in the village Banulla, Municipality of Lipjan.

11. On 18 July 2006 the Municipality of Lipjan published the vacancy announcement in the daily newspaper „Zeri“ for three teachers of English language for 11 classes, one physical education teacher and a teacher of history for 10 classes.

12. The Municipal Directorate of Education (hereinafter: MDE) in the vacancy for the position of a history teacher selected a third person, who also met the requirements of the job vacancy.

13. At the same time, the MDE selected the Applicant for the English language teacher and concluded with her a new employment contract for a time period from 1 September 2006 to 31 August 2007.

14. For such a decision on the selection of the MDE candidate, the Applicant filed an appeal with the Inspection of Education in the Ministry of Education, Science and Technology (hereinafter: MEST).

15. On 8 September 2006 the Inspector of Education of MEST rendered Decision No. 76/2006 by which it was ordered that the Applicant to be assigned in the working position of a history teacher with 14 classes and with the additional classes of English language for the third grade of the primary school „Emin Duraku“ in Banulla.

16. On 30 September 2006 the Inspector of Education of MEST rendered Conclusion No. 108/2006 which obliged the Director of MDE in the Municipality of Lipjan to execute Decision No. 76/2006. Otherwise, the proposal for execution will be submitted to the Municipal Court in Lipjan.

17. On 10 November 2006 the Chief Inspector of Education of MEST rendered a conclusion on approval of execution No. 274/02-5 by which he concluded that Decision No. 76/2006 of 8 September 2006 and Conclusion No. 108/2006 of 30 September 2006 are final and instructed the Applicant *"... to address the Municipal Court in Lipjan within 8 days of receipt of this conclusion for the execution of the decision in terms of its enacting clause."*

18. On 12 December 2006 the Applicant filed a proposal with the Municipal Court in Lipjan for execution of MEST Decision No. 76/2006 of 8 September 2006 and of MEST Conclusion No. 108/2006 of 30 September 2006.

19. On 2 March 2007 the Municipal Court in Lipjan interrupted the execution procedure and referred the Applicant to exhaust all remedies in administrative proceedings before the Independent Oversight Board of Kosovo (hereinafter: the IOBK).

20. On 15 August 2007 the IOBK by Decision No. 1685/2007 rejected the Applicant's appeal with the reasoning that the employment authority acted based on the employment contract, fulfilling its contractual obligations to her, because her employment contract was valid until 31 August 2007.

21. On 16 October 2007 the Municipal Court in Lipjan by Decision C. no. 522/06 rejected the Applicant's claim with the reasoning that this dispute was adjudicated by a final decision in the administrative procedure of IOBK No. 1685/2007 of 15 August 2007.

22. The Applicant filed an appeal with the District Court in Prishtina against the Decision of the Municipal Court in Lipjan.

23. On 29 April 2009 the District Court in Prishtina by Decision Ac. No. 394/2008 annulled Decision C. No. 522/06 of the Municipal Court in Lipjan of 16 October 2007 with the conclusion that the reasoning is unclear and remanded the case for retrial to the Municipal Court in Lipjan.

24. On 8 December 2009 the Municipal Court in Lipjan by Judgment C. No. 152/09 rejected as ungrounded the Applicant's statement of claim by which she requested to be assigned as a teacher of history with 14 classes of history and additional English classes with the reasoning that *„...it is the right of the employment authority to decide which candidates will be selected with the same qualification“*.

25. On 25 January 2010 the Applicant filed an appeal with the Court of Appeal in Prishtina against the Judgment of the Municipal Court in Lipjan.

26. On 16 June 2014 the Court of Appeal in Prishtina by Judgment Ac. No. 1545/2012 rejected the appeal as ungrounded and upheld Judgment C. No. 152/09 of the Municipal Court in Lipjan of 8 December 2009.

27. The Applicant filed a revision with the Supreme Court of Kosovo against Judgment Ac. No. 1545/2012 of the Court of Appeal in Prishtina of 16 June 2014.

28. On 4 November 2014 the Supreme Court of Kosovo by Judgment Rev. No. 264/2014 rejected the Applicant's request for revision as ungrounded with the following reasoning:

> *“... the Supreme Court of Kosovo fully accepted the legal stance of the first instance and second instance court regarding the rejection of the claimant's statement of claim, because the challenged judgments do not contain any essential violation of the provisions of the contested procedure, for which this court takes care ex officio, nor any other essential violation invoked by the claimant in her revision...“*

Applicant's Allegations

29. The Applicant initially lists a number of violations of the Law on Contested Procedure, the Law on Primary and Secondary Education and the Law on Labour.

30. The Applicant alleges that the regular courts did not have the right to question the MEST decisions and that the Applicant's reference in the court proceedings violated the rights guaranteed by Articles 4 [Form of Governance and Separation of Power], 24 [Equality Before the Law] and 34 [Right not to be Tried Twice for the Same Criminal Act] of the Constitution.
31. The Applicant considers that the decisions of regular courts *„...denied the right to the administrative procedure finalized in all its stages ... such as the right to work".*

32. The Applicant requests the Court to approve a *„request for the protection of constitutionality and legality and annuls the judgments as unconstitutional:*

    I. Judgment C. No. 152/2009 of the Municipal Court in Lipjan of 8 December 2009,

    II. Judgment Ac. No. 1545/2012 of the Court of Appeal in Prishtina of 16 June 2014, and

    III. Judgment Rev. No. 264/14 of the Supreme Court of Kosovo of 4 November 2014."

33. At the same time, the Applicant requested the Court to recognize her right based on MEST Decision No. 76/2006 and that the Court obliges the municipal authority to execute this decision.

Assessment of the Admissibility of the Referral

34. The Court will examine whether the Applicant has met the admissibility requirements, laid down in the Constitution, as further specified in the Law and the Rules of Procedure.

35. 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".

36. The Court also notes Article 48 of the Law, which states that:

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

37. In addition, the Court reminds Rule 36 (2) (b) of the Rules of Procedure, which reads that:

> *(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> ...
>
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights ".*

38. The Court notes that the Applicant has based the Referral on violations of the Law on Contested Procedure, the Law on Primary and Secondary Education and the Law on Labour. Therefore, the Court finds that these are issues of legality and not of constitutionality.

39. Moreover, the Court notes that the same claims were filed by the Applicant in the proceedings before the Supreme Court, which by Judgment Rev. No. 264/14 of 4 November 2014 provided a reasoned response to the Applicant's claims as to the application of the pertinent rules of the procedural and substantive law.

40. The 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. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See case *Garcia Ruiz vs. Spain,* no. 30544/96, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

41. Further, the Court considers the Applicant's allegations that "*MEST decisions are final*" and that the regular courts by not executing MEST decisions have denied the Applicant's "*... right to administrative proceeding...*" as well as "*... right to work*".

42. With respect to the abovementioned allegation of the Applicant, the Court concludes that these allegations are not correct and are in contradiction with the documentation that the Applicant submitted to the Court.

43. From the documents submitted to the Court, it follows that the administrative procedure was not finalized by MEST Decision No. 76/2006, as alleged by the Applicant, but by IOBK Decision No. 1685/2007 which rejected the Applicant's appeal with the reasoning

that *"the employment authority acted based on the employment contract, fulfilling its contractual obligations to her ..."*.

44. The Court notes that the Applicant is mainly unsatisfied with legal qualification of the facts and the law applied by the regular courts. The legal qualification of the facts and applicable law are issues of legality.

45. The Applicant has not provided any *prima facie* evidence for a violation of her constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision as to the admissibility of application No. 53363/99, of 31 May 2005).

46. Although the Applicant claims that her rights were violated by erroneous determination of facts and erroneous application of the law by regular courts, she has not indicated how the challenged decisions have violated her constitutional rights.

47. The Court further reiterates, that the mere fact, that the Applicant is dissatisfied with the outcome of the proceedings in her case, does not give rise to an arguable claim of a violation of her rights as protected by the Constitution (See *mutatis mutandis*, ECHR Judgment No. 5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary,* of 26 July 2005).

48. The Applicant was provided with numerous opportunities to present her case and to challenge the interpretation of the law, as erroneously interpreted before IOBK in the administrative procedure, before the Municipal Court in Prishtina, the Court of Appeal and the Supreme Court.

49. The Court, after having examined the proceedings in their entirety, does not find that the pertinent proceedings are 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).

50. The Court considers that the admissibility requirements have not been met. The Applicant has failed to point out and substantiate the allegations that her constitutional rights and freedoms have been violated by the challenged decision.

51. It follows that the Referral is manifestly ill-founded and is to be declared inadmissible in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, on 23 July 2015, 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; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Arta Rama-Hajrizi

KI 144/14 and KI 156/14, Applicants Vilijamin Hajduković and Stanka Tus, Constitutional review of the non-execution of two decisions of the Housing and Property Claims Commission, namely Decision No. HPCC/REC/91/2007 of 19 January 2007, and Decision No. HPCC/REC/81/2006 of 11December 2006

KI 144/14 and KI 154/14, Judgment of 4 August 2014, published on 7 August 2015

Key words: *Individual Referral, civil proceedings, admissible referral, finality and enforceability of decisions, the right to a fair and impartial trial, judicial protection of rights, protection of property.*

The Housing and Property Claims Commission had delivered two final judgments with respects to the Applicant's rights over immovable properties. Those decisions were rendered in favor of both Applicants recognizing their property rights over the contested immovable properties. However, for over 14 years the decisions in question were not executed by the Kosovo Property Agency - the body - in charge of overseeing execution of decisions rendered by the Housing and Property Claims Commission.

The Applicants alleged inter alia that due to non-execution of final and binding judgments in their favor their rights to a fair trial and peaceful enjoyment of possessions as guaranteed by the Constitution of the Republic of Kosovo and the Convention of Human Rights respectively were breached.

The Court firstly noted that the Applicants' Referral meets all procedural requirements and is therefore admissible. As to the merits of the Referral, the Court held the non-execution of the Housing and Property Claims Commission decisions by Kosovo Property Agency and the failure of the competent authorities of the Republic of Kosovo to provide effective mechanisms, in terms of the execution of a final decision, is contrary to the principle of the rule of law and constitutes a violation of fundamental human rights guaranteed by the Constitution. Accordingly, the Court found that there is a violation of the right to a fair trial in connection with the right to a peaceful enjoyment of possessions. The Court backed up its holding by relying in its own case-law on similar matters and the relevant case-law of the European Court of Human Rights.

JUDGMENT
in
Cases No. KI144/14 and KI156/14
Applicants
Vilijamin Hajduković and Stanka Tus
Constitutional Review of the non-execution of two decisions of the Housing and Property Claims Commission, namely Decision No. HPCC/REC/91/2007 of 19 January 2007, and Decision No. HPCC/REC/81/2006 of 11 December 2006

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicants

1. The first Referral was submitted by Mr. Vilijamin Hajduković, with residence in Belgrade, Republic of Serbia (hereinafter: the first Applicant), and the second Referral by Ms. Stanka Tus, with residence in Novi Sad, Republic of Serbia (hereinafter: the second Applicant).

Challenged Decisions

2. Both Applicants challenge the non-execution of decisions of the Kosovo Housing and Property Claims Commission (hereinafter: the HPCC). The first Applicant challenges the non-execution of Decision HPCC/REC/91/2007 of 19 January 2007. The second Applicant challenges the non-execution of Decision HPCC/REC/81/2006 of 11 December 2006.

Subject Matter

3. The subject matter of these Referrals is the constitutional review in respect of the non-execution of two HPCC decisions, the Decision HPCC/REC/91/2007 of 19 January 2007 and the Decision HPCC/ REC/81/2006 of 11 December 2006.

4. Both Applicants allege that as a result of the non-execution of the above-mentioned decisions, their constitutional rights as 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, and relevant articles of the European Convention of Human Rights (hereinafter: the ECHR), Article 6 paragraph 1 [Right to a fair trial], Article 13 [Right to an effective remedy], Article 14 [Prohibition of discrimination], Article 1 Protocol 1 ECHR [Protection of property], were violated.

Legal Basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 37 (1) and 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

6. On 24 September 2014, the first Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 7 October 2014, the President of the Court, by Decision GJR. KI144/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Decision no. GJR. KI144/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Enver Hasani (member).

8. On 10 October 2014, the second Applicant submitted the Referral to the Court.

9. On 23 October 2014, the President, in accordance with Rule 37 (1) of the Rules of Procedure, ordered that the Referral of the second Applicant, registered under KI156/14 be joined to the Referral of the first Applicant, registered under the number KI144/14.

10. On 1 December 2014, the Court informed the Applicants and the Kosovo Property Agency (hereinafter: KPA), which is the legal

successor to the Housing and Property Directorate (hereinafter: HPD), about the registration and the joinder of the Referrals.

11. On 26 June 2015 the President, by Decision Nr.K.SH.KI 144/14 & KI 156/14 appointed Judge Arta Rama-Harjizi as the member of the Review Panel instead of Judge Enver Hasani, whose mandate as Judge of the Constitutional Court expired on 26 June 2015.

12. On 3 July 2015, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.

Summary of Facts regarding the Referral of the first Applicant

13. In 1992, the first Applicant was given occupancy rights to a socially-owned apartment located at the address Rasadnik, Str. Petar Prije G 2/5, in the Municipality of Peja. Subsequently, in late 1992, the first Applicant concluded a contract for the purchase of the apartment from the Socially-Owned Enterprise (SOE) "Boris Kidrič". The first Applicant certified the purchase in the Municipal Court of Peja on 29 December 1992, under ordinal number 8535/92.

14. Following the war in 1999, the first Applicant fled Kosovo and took up temporary residence in Belgrade. The apartment in Peja was subsequently occupied by a third party, B.B.

15. On 8 February 2002, the Applicant filed a claim [DS304087] to the HPD in which he requested the confirmation of his possession rights to the apartment, which had been in his possession until 1999.

16. On an unspecified date, the third party B.B. filed a claim [DS501273] to the HPD, in which he also requested the confirmation of his possession rights to the same apartment mentioned above.

17. The HPD referred both claims to the Housing and Property Claims Commission (HPCC).

18. On 18 June 2005, the HPCC rendered a collective Decision HPCC/D/197/2005/A & C, which included the two above-mentioned claims [DS3014087 and DS501273].

19. In its decision, the HPCC recognized to claimant DS501273 (i.e. the third party B.B.) the right of possession of the apartment, by which he acquired all the rights as the claimant of Category A under Section 4.2 of UNMIK/REG/2000/60.

20. By the same decision, the claimant in the claim DS304087 (i.e. the first Applicant) was denied the right to possession over the disputed apartment and, accordingly, he was recognized the rights to compensation as the claimant of Category C under Section 4.2 of UNMIK/REG/2000/60.

21. On 10 October 2005, the first Applicant submitted a request for reconsideration of the Decision HPCC/D/197/2005/A&C, of 18 June 2005. This request was rejected by the HPCC on 19 January 2007 with decision HPCC/REC/91/2007.

22. On 23 April 2007, the first Applicant again addressed the HPCC requesting the annulment of decision HPCC/REC/91/2007 of 19 January 2007. The first Applicant claimed that this decision was a collective decision regarding a number of requests for reconsideration, but that his request for reconsideration had not been included.

23. On 8 June 2007, the HPCC informed the first Applicant that his request for reconsideration had already been decided and his additional request was refused.The HPCC stated that, *"Following Section 14.1 of UNMIK Regulation 2000/60, which allows for only one reconsideration request from a party to a claim, you have exhausted your legal remedies and additional requests may not be processed"*.

24. On 12 January 2012, the first Applicant sent a letter to the KPA requesting the execution of the HPCC Decision HPCC/D/197/2005/A&C of 18 June 2005, in which he was recognized as a claimant of Category C, and became entitled to compensation pursuant to Section 4 of UNMIK/REG/2000/60.

25. On 7 March 2012, the KPA replied to the first Applicant's request. The KPA stated, *inter alia*, that:

> *"Kosovo Property Agency (the Agency), which has inherited a part of the responsibility of the former Housing and Property Directorate (Directorate), wants to inform you that we have received your letter [...], by which you seek the compensation of the value of the apartment, related to the property located in Peja/Pec str. "Fidanishte" G-2, 1st floor, apartment no. 5.*
>
> *As you already know, the Directorate has received two claims regarding the above mentioned property, and that is the claim of "C" category DS304087 which you have submitted, and the claim of "A" category, DS501273 submitted by Mr. B. B.*

The Housing and Property Claims Commission (HPCC) took the decision no. HPCC/D/197/2005/A & C of 18 June 2005 by which the claimant of A category was recognized the right over the property upon payment of the amount provided for in section 4.2 of UNMIK Regulation 2000/60. If the claimant of A category uses this right you will get adequate compensation as the applicant of C category in accordance with the provisions of Section 4.2 of UNMIK Regulation 2000/60.
[...]
The Kosovo Property Agency has adopted the criteria and procedure of compensation and has made efforts to ensure adequate funding for the implementation of the provisions of Article 4 of UNMIK Regulation 2000/60 and decisions of the Commission related to this kind of requests, but so far failed to provide the necessary funds. The Agency will continue to insist on the provision of funds, necessary to implement the compensation program. As soon as this is achieved, the Agency will contact you regarding the implementation of the Commission's decision."

Summary of facts regarding the Referral of the second Applicant

26. On 6 November 2012, with the death of her husband, Ms. Stanka Tus became the widow of Mr. Nikola Tus, referred to in all of the legal documents relevant to this Referral. For the purposes of this Referral, she will be referred to as the second Applicant.

27. Beginning on 1 April 1968, the second Applicant was allocated occupancy rights to a socially-owned apartment located at Muharrem Bekteshi Street, nn, No. 4, entrance II, in Peja.

28. The second Applicant occupied this apartment until 23 March 1991, when she was apparently evicted and the apartment became occupied by a third party, S.D. The second Applicant claims that she undertook various legal proceedings in order to recover her occupancy rights to the apartment until, in June 1999, she was compelled to flee Kosovo.

29. The third party, S.D., purportedly purchased the apartment at some unspecified time between 1991 and 1999 under the Law on Housing. Furthermore, at some unspecified time after 2000, S.D., purportedly sold the apartment to another party, A.G.

30. At some point after 2000, the second Applicant filed a claim with the HPD requesting the confirmation of her rights to use the apartment. Her claim was registered under number DS603997.

31. On 31 March 2006, the HPCC rendered its Decision (HPCC/D/252/2006/A&C), by which it confirmed that the second Applicant was the lawful rights holder for the use of the apartment. Consequently, the second Applicant was recognized the rights of a Category A claimant.

32. The third party (S.D.) who had occupied the apartment since 1991 had been registered with the HPD under number DS500011. This party was referred to by the HPCC as the "First Owner", and was recognized the rights of a Category C claimant. Regarding the purported sale of the apartment by this "First Owner", the HPCC stated in paragraphs 12 and 13 of its Decision that:

> *"12. As pointed out above, section 4 of UNMIK/REG/2000/60 does not apply where there has been a further valid sale from the First Owner to a further owner. This, however, is subject to an exception. In terms of sections 5.1 and 5.2 of UNMIK/REG/2000/60, a First Owner is prohibited from selling his or her apartment until the deadline for the lodging of claims referred to in section 3.2, or until the resolution of any claim under UNMIK/REG/2000/60 pertaining to that apartment, whichever is the later. Section 5.2 specifically provides that:*
>
> *"Any contract relating to a sale, exchange or gift made in violation of this section shall be null and void.13.*
>
> *"In each of Claim [...] DS603997 the "First Owner" purported to sell the properly to a further owner. The sale took place after UNMIK/REG/2000/60 became effective and before the resolution of this claim under the said regulation. Each sale was accordingly entered into in breach of sections 5.1 and 5.2 of UNMIK/REG/2000/60 and is null and void. Accordingly, the apartments in question remained in the ownership of the "First Owners". Section 4 therefore applies to this claim."*

33. On an unspecified date, the factual occupant of the apartment, A.G., submitted a request for reconsideration of the HPCC Decision of 31 March 2006, as a so-called "Interested Party".

34. On 11 December 2006, the HPCC rendered the collective Decision HPCC/REC/81/2006, in which it rejected the request for reconsideration and upheld its decision in first instance. In paragraph 50 of its decision, the HPCC addressed the claims related to the second Applicant's rights (referred to as the "Responding Party" in the quotation below) and stated, *inter alia*, that:

"50. In Claim Nos. DS603997 & DS500011 the Requesting Party is an Interested Party who did not participate in the first instance proceedings. In these proceedings the category A Claimant was granted repossession and the competing category C Claim was rejected. The Requesting Party avers that he acquired a property right over the claimed property based on a purchase contract concluded between her and the category C Claimant. The Requesting Party also avers, without proof, that the Responding Party, who is the successful category A Claimant in the initial decision, did not lose his property right as a result of discrimination but that he was dismissed because he lacked the qualifications of a mechanical engineer. The Commission has reviewed the evidence presented by both Parties and concludes that the category C Claimant was allocated the claimed property even though the administrative procedure to allocate the property had not yet been finalized. The category C Claimant thus entered the apartment unlawfully since he did not possess the required allocation decision and contract on use. These documents were only issued after he entered into the property. These circumstances too point to discrimination against the category A Claimant. The Commission accordingly confirms its finding that the Responding Party lost the claimed property due to discrimination."

35. On 14 August 2008, the second Applicant sent a letter to the Kosovo Property Agency, as the legal successor of the HPD, requesting the execution of the HPCC Decision confirming her category A status and granting her the restitution of the right to use the apartment.

36. On 4 September 2008, the KPA, by letter (Ref: 02044/08/ bi), responded to the second Applicant as follows:

"I would like to confirm the receiving of your claim of date 14 August 2008 for the restitution of the ownership, pertaining to the property that is subject to the above mentioned claims (HPCC/D/252/2006, 31 March 2006). By this we notify you that the first instance proceedings, the Commission rendered decision (HPCC/D/252/2006, of 31 March 2006) that restituted to you the ownership over the contentious property. However, a second party submitted to the HPCC of the Housing and Property Directorate (hereinafter: HPD) a reconsideration request of the first instance decision. The HPCC rejected this reconsideration request and upheld its first instance decision. We have also notified you that the decision of the Commission is effective on the day the HPD specifies the amount that should be paid by the claimant for the apartments pursuant to Article 4.2 of UNMIK Regulation 2000/60.

The proceedings respectively the compensation percentage for this type of claims pertaining to the group of mutual compensation has not been established yet. The KPA which inherited the responsibilities of the previous HPD will notify you in due time on the compensation proceedings and after that the restitution of the property under your ownership [...]"

37. On 23 February 2012, the second Applicant again addressed the KPA with a new letter, requesting the enforcement of Decision HPCC/REC/81/2006, of 11 December 2006.

38. On 5 March 2012, by a new letter (Ref. 00327/12/fk/II), the KPA responded to the second Applicant in an almost identical manner as in its previous letter (Ref. 02044/08/bi), of 4 September 2008. With regard to the method for determining the compensation to be paid, the KPA stated that:

"The KPA has adopted the compensation criteria and proceedings and has also made efforts to acquire the required funds in order to execute the provisions of Article 4 of UNMIK Regulation 2000/60 and the HPCC decisions pertaining to this type of claims, but so far the necessary funds have not been acquired. The KPA will continue to insist in acquiring the necessary funds to implement the compensation program. As soon as this is achieved the KPA will contact you regarding the execution of the HPCC decision."

39. On 28 August 2012, the second Applicant addressed by letter the coordinator of the EULEX mission for property issues, requesting that EULEX uses its powers to expedite the procedure at the KPA in order that the Decision HPCC/REC/81/2006, of 11 December 2006 is executed.

40. On 20 September 2012, the coordinator of the EULEX Mission for property issues responded to the second Applicant. In the response, he stated:

"[...] Regarding your appeal we wish to remind you that pursuant to Article 22 of the Constitution of Kosovo it is provided that the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols are directly applicable in Kosovo.
[...]

Additionally, we advise you that pursuant to the case law of the European Court of Human Rights it has been established that the

execution of any decision rendered by any independent and impartial court must be considered as an integral part of the right to a fair public hearing.

Therefore, if you consider that your constitutional right to a fair public hearing, including the execution of the decision rendered to your benefit, has been violated as a result of the failure of competent institutions of the rule of law in Kosovo to execute the above mentioned decision, than we advise you that you are entitled to submit a Referral to the Constitutional Court of Kosovo to protect your property rights."

41. On 13 September 2012, the second Applicant submitted a request to the Ombudsperson Institution of Kosovo, in order to protect his rights and to accelerate the procedure of execution of the HPCC decisions. This request was registered under number 388/2012 and, on 21 September 2012, it was declared admissible by the Ombudsperson Institution.

42. On 22 July 2013, the second Applicant again addressed the KPA in order to inform them of the death of her husband and to reiterate her request for execution of the decisions of the HPCC awarding her category A status and the right to restitution of the apartment in Peja. There is no record in the file of a response from the KPA to this letter.

43. On 24 July 2013, the Ombudsperson Institution, informed the second Applicant of the results of its investigation. The Ombudsperson Institution states, *inter alia*, that:

"On 31 January 2013 the Ombudsperson received an answer from the KPA, where it is specified that the claim of Mr. Tus is awaiting the realization from the KPA and that the Agency together with the Government of Kosovo and donors are making all efforts to establish the funds to implement these decisions, but that currently they are not able to specify the date when the decision pertaining to the claim of Mr. Tus will be fulfilled.
[...]
Considering that the case of Mr. Tus was solved in accordance with Article 20, item 1.3 of Law No.03/L-195 on Ombudsperson, the latter decided to terminate the investigation in this case."

Applicants' Allegations

44. Both the first and the second Applicant claim that in the existing legal system in Kosovo there is no effective legal remedy on the basis of which it would be possible in these cases to prevent further violation of

the rights guaranteed by the Constitution (except to address the Constitutional Court of Kosovo) which would provide legal redress to remedy the unfounded delay of the execution of the HPCC decisions, in accordance with Section 1.4 of UNMIK Regulation 2000/60.

45. Both Applicants address the Court with the request:

I. That the Court declares the Referrals admissible

II. That the Court holds the specified violations of the Constitution of the Republic of Kosovo, committed against both Applicants:

- Article 24 [Equality Before the Law]
- Article 31 [Right to Fair and Impartial Trial]
- Article 32 [Right to Legal Remedies]
- Article 46 [Protection of Property]
- Article 54 [Judicial Protection of Rights]

46. As well as the violations of the European Convention of Human Rights and its Protocols:

a) Right to a fair trial pursuant to Article 6, paragraph 1 of the Convention, b) Right to an effective remedy under Article 13 of the Convention, c) Right to peaceful enjoyment of property under Article 1, Protocol 1 of the Convention, d) Right to enjoy the rights and freedoms set forth in the Convention without discrimination on any grounds pursuant to Article 14 of the Convention, e) Right to home and family life pursuant to Article 8 of the Convention.

47. The first Applicant also requests: "*On the basis of found violations of the rights guaranteed by the Constitution and laws to be awarded compensation for material and non-material damage.*"

48. The second Applicant also requests "*That the Court orders the KPA TO URGENTLY enable the execution of its decision – eviction of the illegal occupant and enable the possession of the apartment to the legal holder of the right of occupancy – here the Applicant*".

Relevant legal provisions

49. UNMIK REGULATION NO. 2000/60 of31 October 2000 ON RESIDENTIAL PROPERTY CLAIMS AND THE RULES OF PROCEDURE AND EVIDENCE OF THE HOUSING AND PROPERTY DIRECTORATE AND THE HOUSING AND PROPERTY CLAIMS COMMISSION

Section 4
RESTITUTION OF OCCUPANCY RIGHTS TO SOCIALLY OWNED APARTMENTS LOST AS A RESULT OF DISCRIMINATION

4.1 This section applies to any occupancy right to a socially-owned apartment which was cancelled as a result of discrimination.

4.2 As an exception to section 3.3, in relation to a socially owned apartment which was subsequently purchased from the allocation right holder by the current owner under the Law on Housing (hereafter "First Owner"), the following rules shall apply:

(a) The claimant has a right to the ownership of the apartment upon payment to the Directorate of:

(i) The purchase price for the apartment contained in the contract of sale concluded by the First Owner; or

(ii) The price at which the claimant would have been entitled to purchase the apartment under the Law on Housing but for the discrimination (whichever is determined by the Directorate to be less), plus a percentage of the current market value of the apartment, as determined by the Directorate, and the cost of any improvements made to the apartment by the First Owner.

(b) To exercise the right to restitution in kind, the claimant must pay the sum referred to in section 4.2(a) to the Directorate within 120 days of the Commission's decision on the right to restitution. Upon the claimant's application, the Directorate may extend the deadline by up to 120 days if not extending it would result in undue hardship to the claimant. Upon payment of this sum, the Commission shall issue a decision awarding ownership of the apartment to the claimant; and

(c) Money paid under section 4.2(b) will be held by the Directorate in a trust fund. A First Owner who loses the ownership of an

apartment under this section will upon request be compensated by the Directorate from the trust fund for the amount s/he paid for the purchase of the apartment, a percentage of the current market value of the apartment, as determined by the Directorate, as well as for the cost of any improvements s/he made to the apartment. Any outstanding obligations of the First Owner under the Law on Housing are cancelled.

4.3 Except as provided in the previous section, no person whose rights are affected by a decision of the Commission awarding restitution in kind shall be entitled to any form of compensation.

4.4 Any claimant found by the Commission to have a right to restitution of a socially owned apartment, but who is not awarded restitution in kind in accordance with section 4.2, shall be issued a certificate by the Directorate stating the current market value of the apartment in its current condition, minus the amount which the claimant would have been required to pay for the purchase of the apartment under the Law on Housing. The Directorate shall establish formulae for determining these amounts and the amounts referred to in sections 4.2(a) and (c).

4.5 Any person with a certificate under section 4.4 shall be entitled to fair compensation proportionate to the amount stated in the certificate, to be paid from such funds as may be allocated in the Kosovo Consolidated Budget or any fund set up for this purpose under the present regulation. The method of calculation and payment of such compensation shall be established in subsequent legislation.

Admissibility of the Referral

50. In order to be able to adjudicate the Applicants' Referrals, the Court first needs to examine whether the Applicants have met the admissibility requirements provided by the Constitution, and further specified in the Law and Rules of Procedure.

51. With respect to the Applicants' Referrals, 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"*.

52. In this respect, the Applicants have exhausted all legal remedies, provided by law, and due to lack of any other available effective remedy, they have addressed the Constitutional Court with the request

for execution of their respective decisions of the Housing and Property Claims Commission, namely Decision no. HPCC/REC/91/2007 of 19 January 2007, and Decision no. HPCC/REC/81/2006 of 11 December 2006.

53. 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".*

54. 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, ECHR, Judgment of 19 October 2000). The ECHR 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.

55. 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".*

56. Regarding the fulfillment of this requirement, the Court notes that the Applicants have accurately specified what rights, guaranteed by the Constitution have allegedly been violated to them, by non-execution of the HPCC Decisions in their cases.

57. The Court notes that the Applicants may legitimately claim to be the victims of the non-execution of the HPCC Decisions.

58. In sum, the Court considers that the Applicants are authorized parties; all legal remedies have been exhausted; the requirement of the legal deadline as a result of a continuing situation was met, and that they have accurately clarified the alleged violation of rights and freedoms and they have referred to the ECHR case law, for exercising their rights to enjoy and possess the property.

59. Since the Applicants have 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 the Referral

60. The Court notes that the Applicants allege violation of their 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 of 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].

61. In these cases, the Court will examine the merits of the Referral, pursuant to Article 31 in conjunction with Article 6.1 of ECHR, Article 46 of the Constitution in conjunction with Article 1 of the Protocol 1 of ECHR and Article 54 of the Constitution [Judicial Protection of Rights].

As to alleged violation of the right to fair and impartial trial

62. The Court notes that the Applicants mainly allege that the delay and non-execution of the Decision no. HPCC/REC/91/2007, of 19 January 2007, and the Decision HPCC/REC/81/2006, of 11 December 2006, violate their rights to a fair trial.

63. In this regard, the Court refers to Article 31 of the Constitution, which provides:

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

    2. *„Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law“.*

64. In addition, Article 6.1 [Right to a fair trial] of ECHR provides:

    "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

65. Moreover, the Court refers to Article 54 of the Constitution, which provides:

"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."

66. In the present cases, 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 authority for the execution of the decisions of the HPCC and of the decisions of the Kosovo Property Claims Commission of the KPA. This fact was confirmed also by the KPA representatives, who participated as a party in the public hearing held on 10 March 2014 in the Constitutional Court of the Republic of Kosovo, in case no. KI187/13.

67. As to the first Applicant, the Court notes that the Decision of the HPCC no. HPCC/REC/91/2007 of 19 January 2007, recognized his rights as a claimant of Category C, and accordingly he was entitled to all the rights provided by UNMIK Regulation 2000/60, Section 4.2, under c, which states, *inter alia*, that:

"[...] The Applicant of C category who loses the ownership of an apartment under this section will upon request be compensated by the Directorate from the trust fund for the amount s/he paid for the purchase of the apartment, a percentage of the current market value of the apartment, as determined by the Directorate, as well as for the cost of any improvements s/he made to the apartment. [...]"

68. Accordingly, the Court established that the first Applicant, by HPCC Decision no. HPCC/REC/91/2007 of 19 January 2007, was recognized the right to compensation, which he has not yet received despite the expiry of the reasonable time limits, which are related to the right to a fair trial.

69. As to the second Applicant, the Court notes that the HPCC Decision no. HPCC/REC/81/2006, of 11 December 2006, recognized her rights as a Category A claimant, and accordingly she was entitled to all the rights acquired on this basis, which are provided by UNMIK Regulation 2000/60, Section 4.2, under a.

70. Accordingly, based on the review of Decision HPCC/REC/81/2006, of 11 December 2006, the Court notes that the HPCC conclusively determined that the second Applicant was granted the right to use the apartment, which she would be able to achieve after payment of a specified amount to be determined by the HPD (now KPA), all within

120 days, as provided by UNMIK Regulation 2000/60 Section 4.2, under a, which states:

> *"(a) The claimant has a right to the ownership of the apartment upon payment to the Directorate of:*
>
> *(i) The purchase price for the apartment contained in the contract of sale concluded by the First Owner; or*
>
> *(ii) The price at which the claimant would have been entitled to purchase the apartment under the Law on Housing but for the discrimination (whichever is determined by the Directorate to be less), plus a percentage of the current market value of the apartment, as determined by the Directorate, and the cost of any improvements made to the apartment by the First Owner."*

71. In seeking the execution of these decisions, the Applicants approached the KPA, as the HPD successor, several times, in writing, requesting to have the abovementioned decisions executed. Furthermore, the second applicant also approached other institutions of the Republic of Kosovo. The Applicants have continuously made efforts to exercise their right in an institutional way, but even after more than seven years, this right has not been executed.

72. In this regard, the Court notes it would be meaningless if the legal system of the Republic of Kosovo allowed that a final judicial decision remains ineffective in disfavor of one party. Interpretation of the above Articles exclusively deals with the access to court. Therefore, the non-effectiveness of procedures and the non-implementation of the decisions produce effects that raise 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 ECHR Decision in the case *Romashov v. Ukraine*, Submission No. 67534/01. Judgment of 25 July 2004)·

73. 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 abovementioned articles (*see case Hornsby v. Greece, ECtHR 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 the execution of a final decision, which is in their favor.

74. No authority can justify the non-execution of decisions, intending to obtain revision and fresh review of the case (*see, Sovtranstvo Holding*

against Ukraine, No. 48553/99, § 72, ECHR 2002-II, and Ryabykh v. Rusia, No. 52854/99, § 52, ECHR 2003-IX).

75. 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*).

76. The Court emphasizes that it is not its duty to determine what is the most appropriate way for the 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 the violations or denials of any rights guaranteed by the Constitution or by law (see Article 54 of the Constitution). In this regard, the Court notes that UNMIK Regulation 2000/60 in Section 4.2, under c, provided for the establishment of a fund (see paragraph 63, item 5) as one of the possible mechanisms for the enforcement of its decisions: *"Money paid under section 4.2 (b) will be held by the Directorate in a trust fund [...]"*.

77. Likewise, based on the review of the annual report on the work of the Kosovo Property Agency of 2013, the Court notes that on page 24, in section 5.B. *Implementation and compensation schemes,* it is stated, *"[...] that in order to finance and pay, a special fund was established under the Ministry of Finance of the Republic of Kosovo."*

78. The Court wishes to emphasize that in the case KI187/13, it has already dealt with the constitutional review of HPCC decisions and that on 1 April 2014 it rendered the judgment in which it held that there has been a violation of Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR and Article 54 of the Constitution, as well as a violation of the Applicants' right to the peaceful enjoyment of their property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of ECHR (*see case:KI187/13N. 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. HPCC/D/A/114/2011, of 22 June 2011*).

79. The Court considers that the complexity of establishing a system of sub-legal acts and funds for the execution of the decision in

accordance with Section 4 of UNMIK Regulation 2000/60 could be achieved in a period of fourteen (14) years, and further delay is not a valid reason which would justify the non-implementation of legal measures that have been established by the mandate, firstly of the HPD and subsequently of the KPA.

80. Therefore, the burden of non-execution and non-finding of the appropriate mechanisms for the execution of these two final decisions, the Decision no. HPCC/REC/91/2007 of 19 January 2007 and the Decision HPCC/REC/81/2006, of 11 December 2006, falls solely on the KPA. Lack of implementation mechanisms of this institution should not in any way be a reason for denial of the rights of the Applicants to the enjoyment of their property.

81. Accordingly, the Court is of the view that the KPA, as the legal successor of the HPD, in terms of the assumed rights and obligations, has the obligation to execute the decisions of the HPCC, and inherited all claims arising during the mandate of the HPD, which under the law were transferred as an obligation to KPA.

As to the alleged violation of the right to protection of property

82. The Applicants allege that there has been violation of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol no. 1 of ECHR.

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 (...)"

[...]

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".

83. Regarding the alleged violations related to the protection of property, the Court finds that the decisions of the HPCC represent a legitimate expectation for the Applicants to have the right to that property. Thus, the Applicants have the right to peacefully enjoy the abovementioned property, as guaranteed by Article 1 of Protocol no. 1 of the European Convention. Under these circumstances, they are denied the right to enjoy and possess the property (see: *mutatis mutandis, Gratzinger and Gratzingerova v. the Czech Republic (dec.), no. 39794/98, para 73, ECHR 2002-VII).*

84. Therefore, the Court finds that as a consequence of the non-execution of the decisions HPCC/REC/91/2007 and HPCC/REC/81/2006, the Applicants have been denied their right to the peaceful enjoyment of their possessions, in violation of Article 46 of the Constitution, and of Article 1, Protocol 1, of the ECHR.

CONCLUSION

85. In conclusion, the non-execution of HPCC decisions by KPA and the failure of the competent authorities of the Republic of Kosovo to provide effective mechanisms, in terms of the execution of a final decision, is contrary to the principle of the rule of law and constitutes a violation of fundamental human rights guaranteed by the Constitution.

86. Under these circumstances, the Court concludes that the non-execution of the final decisions, the Decision no. HPCC/REC/91/2007 of 19 January 2007, and the Decision no. HPCC/REC/81/2006, of 11 December 2006, constitutes a violation of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR and Article 54 of the Constitution.

87. Moreover, the Court notes that, because of delays and non-execution of the Decision no. HPCC/REC/91/2007 of 19 January 2007 and of the Decision no. HPCC/REC/81/2006, of 11 December 2006, the Applicants were unjustly deprived of their right to their property. In this way, the rights of the Applicants to the peaceful enjoyment of their property, guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of the ECHR, were 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 the session held 4 August 2015, unanimously,

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR;

III. TO HOLD that there has been a violation of Article 54 of the Constitution;

IV. TO HOLD that there has been violation of Article 46 of the Constitution in conjunction with Article 1 Protocol 1 of the ECHR;

V. DECLARES that the Decision no. HPCC/REC/91/2007, of 19 January 2007, and the Decision no. HPCC/REC/81/2006, of 11 December 2006, are to be executed by the Kosovo Property Agency (KPA);

VI. ORDERS the Kosovo Property Agency (KPA), that in accordance with Rule 63 of the Rules of Procedure of the Court, to notify as soon as possible, but not later than within six (6) months, the Constitutional Court regarding the measures taken to implement the Judgment of this Court;

VII. TO NOTIFY this Judgment to the Parties;

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

IX. TO DECLARE this Judgment effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Arta Rama-Hajrizi

KI61/14, Applicant Faik Tërnava - Constitutional Review of Judgment, Rev. no. 195/2013, of the Supreme Court of Kosovo of 10 January 2014

KI61/14, Resolution on Inadmissibility of 2 July 2015, published on 19 August 2015

Keywords: *Individual referral, manifestly ill-founded referral, monetary compensation, civil procedure, active and passive legitimacy, fair and impartial trial, unjust enrichment*

The Supreme Court rendered a decision obliging the Applicant to repay the amount of financial means. The Applicant filed complaint with the Constitutional Court - without reference to any constitutional provision in particular - for violation of the right to fair trial and the right to property.

The Constitutional Court noted that the proceedings conducted before the regular courts have not been unfair and that in some cases, they rendered decisions in favour of the Applicant. The Court also noted that the Applicant had not sufficiently specified his Referral, and furthermore, he failed to substantiate his allegations with concrete evidence. The Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI61/14
Applicant
Faik Tërnava
Constitutional Review of Judgment, Rev. no. 195/2013, of the Supreme Court of Kosovo of 10 January 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Faik Ternava from Vushtrri (hereinafter: the Applicant), represented by Mr. Nexhat Beqiri, lawyer from Vushtrri.

Challenged decision

2. The Applicant challenges the Judgment (Rev. no. 195/2013, of 10 January 2014) of the Supreme Court which was served on him on 13 February 2014.

Subject matter

3. The subject matter is the Applicant's request for the constitutional review of the challenged decision, by which the Supreme Court had partially rejected his request for revision with regards to *"unjust enrichment"*.

4. The Applicant does not refer to any right or freedom guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) which may have been violated.

Legal basis

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

Proceedings before the Constitutional Court

6. On 31 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 3 April 2014, the President of the Court, by Decision no. GJR. KI61/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision no. KSH. KI61/14, the President of the Court appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova, and Arta Rama-Hajrizi.

8. On 16 May 2014, the Court notified the Applicant of the registration of the Referral and requested that he submits a power of attorney for Mr. Nexhat Beqiri, whom he had declared as his representative. On the same date, the Court sent a copy of the Referral to the Supreme Court.

9. On 22 May 2014, the Applicant submitted the requested document to the Court.

10. On 2 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

11. From 1999 until 2000, the Applicant states that he worked at the Municipality of Vushtrri, namely the Commission for War Crimes Investigations and Missing Persons (hereinafter: the Commission).

12. This Commission, according to the Applicant, was established by the Interim Government of Kosovo by the Decision [unnumbered] of 5 July 1999. Based on this decision, the Chairperson of the Municipal Assembly of Vushtrri had authorized the Applicant to work for the Commission.

13. Since the Municipality of Vushtrri had not responded to the Applicant's requests for monetary compensation, he, along with

several other persons, filed a claim with the Municipal Court in Vushtrri, requesting that they be paid for the work performed as members of the Commission.

14. On 5 July 2002, the Municipal Court in Vushtrri (Judgment C. no. 13/2001) approved the Applicant's and other claimants' statement of claim and obliged the Municipality of Vushtrri to pay to each claimant, including the Applicant, the requested amount of money, including legal interest, for the work performed as members of the Commission.

15. The Municipality of Vushtrri filed an appeal against the Judgment of the Municipal Court in Vushtrri with the District Court in Mitrovica.

16. On 11 December 2002, the District Court in Mitrovica (Judgment Ac. no. 93/2002) rejected the appeal filed by the Municipality of Vushtrri as ungrounded and upheld the Judgment of the first instance court.

17. The Municipality of Vushtrri filed a request for revision against the Judgment of the District Court in Mitrovica with the Supreme Court, due to procedural violations, erroneous determination of factual situation and erroneous application of substantive law.

18. Meanwhile, whilst the request for revision filed by the Municipality of Vushtrri was being reviewed by the Supreme Court, the Applicant had filed a proposal to execute the Judgment (C. no. 13/2001, of 5 July 2002) of the Municipal Court in Vushtrri, before the District Court in Mitrovica. The latter had upheld the Judgment of the Municipal Court in Vushtrri.

19. On 5 March 2003, the Municipal Court in Vushtrri (Decision E. no. 59/2003) approved the proposal for execution, by which the Applicant's and other claimants' statement of claim on payment of a certain amount of money by the Municipality of Vushtrri was granted.

20. On 11 September 2003, namely, several months later, the Supreme Court (Judgment Rev. no. 48/2003) approved the revision filed by the Municipality of Vushtrri as grounded, thus 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. The Supreme Court reasoned its decision as follows:

> *"The Supreme Court of Kosovo cannot uphold the stance of the lower instance courts, because, according to the assessment of this Court, the challenged judgments have been rendered by the erroneous application of the substantive law. Based on the United*

Nations Resolution no. 1244 and UNMIK Regulations no. 1999/01 and 1999/24, a new reality has been created after the war in Kosovo. [...] Pursuant to the UNMIK Regulation No. 1999/45 [...] the bodies of self-government of municipalities and municipal civil service have been established. Due to the fact that the claimants do not possess the contracts wherefrom obligations derive, according to the consideration of this Court, in the present case, the material law has been erroneously applied, therefore the judgments of the two courts were modified, so the claimants' statement of claim was rejected as ungrounded. [...] According to the consideration of the Court reviewing the revision, the lack of real passive legitimacy of the sued municipality derives from the situation existing in the case files, and by acting ex-officio, the Court will, by a judgment, reject the Claimants' statement of claim as ungrounded, upon confirming the lack of active or passive legitimacy of the litigant".

21. Upon this, the Municipality of Vushtrri filed a claim with the Municipal Court in Vushtrri, requesting to reclaim the financial means paid to the Applicant from his bank account, based on Decision (E. no. 59/2003, of 5 March 2003) of the Municipal Court in Vushtrri.

22. On 11 July 2005, the Municipal Court in Vushtrri (Judgment C. no. 18/2004) approved the statement of claim of the Municipality of Vushtrri, now the claimant, thereby obliging the Applicant to repay the Municipality of Vushtrri, due to unjust enrichment, the amount of financial means received, with a certain interest rate, starting from 10 February 2004 until the final payment.

23. The Applicant filed an appeal against the Judgment of the Municipal Court with the Court of Appeal, alleging that it was rendered "*in essential violation of the provisions of the Law on Contested Procedure, erroneous and incomplete determination of factual situation, and erroneous application of substantive law*".

24. On 7 March 2013, the Court of Appeal in Prishtina (Judgment C. no. 678/2012) rejected the appeal filed by the Applicant, finding that "*the first instance court has neither essentially violated the contested procedure provisions, nor erroneously applied the substantive law [...]*".

25. The Applicant filed a request for revision against the Judgment of the Court of Appeal with the Supreme Court, requesting the annulment of the decisions of the lower courts and the return of the matter for retrial.

26. On 10 January 2014, the Supreme Court (Judgment Rev. no. 195/2013) rejected as ungrounded the revision of the Applicant in relation to his obligation to repay the amount of financial means due to unjust enrichment, thereby confirming his obligation to make the repayment.

27. The Supreme Court, with the aforementioned decision, approved as grounded the Applicant's revision only in relation to the amount of the interest rate set by the Municipal Court in Vushtrri (Judgment C. no. 18/2004, of 11 July 2005), thus modifying this Judgment only in regards to the amount of the interest rate, which the Applicant was obliged to pay. In its reasoning, the Supreme Court stated as follows:

> *"The Supreme Court of Kosovo assessed as ungrounded the following allegations of the respondent* [Applicant] *stipulated in the revision: that he received the money from the Municipality of Vushtrri based on judgments of the lower instance courts, that for such money he had performed work in Commission, that he received the money in good trust and that he is not obliged to return them. Such allegations* [of the Applicant] *are ungrounded since the judgments of the lower court instances based on which the payment was made to the respondent* [Applicant] *in the procedure of execution were modified, so that the statement of claim [...] is rejected. Therefore, the lower instance courts have correctly concluded that the respondent benefited materially without legal ground as per Article 210, para.1 and 2 of LOR, whereas according to paragraph 4 of this Article, the obligation to return the money derives also when you receive something having into account the legal ground, which later on ceased to exist.*
> *However, the Supreme Court of Kosovo finds that in the decision relating to interest rate, the provision of Article 277 of LOR was applied incorrectly, since this interest rate was not determined in compliance with this legal provision, [...]. Therefore, given the fact that in relation to the received interest rate, the first instance judgment contained erroneous application of substantive law [...] the same judgment in this part was modified as per Article 224 para. 1 of LCP"*

Applicant's allegations

28. As stated above, the Applicant does not refer to any right guaranteed by the Constitution, which could have been violated.

29. The Applicant, in general, alleges that *"[...] the courts in the present case were partial and that the procedures conducted after the judgment Rev. no. 48/2003 were unfair, since they have violated my*

right to receive monetary compensation for the performed work, and they [the courts] *have applied erroneously the UNMIK Regulations for competencies of the Kosovo Provisional Government as well as those of the Municipal Council of Vushtrri."*

30. In his Referral, the Applicant also states as follows: "*I consider that I have worked based on Decision of Municipal Council and under its authorization whereby the same Commissions have functioned throughout Kosovo and have been paid based on decision of Interim Government established in accordance with UNMIK Regulations*".

31. Furthermore, the Applicant states that: "*[...] the legal provisions have allowed the work performed by me and other members of the commission, so there is no legal ground that those undertaken actions to not be approved as work[...]*".

Assessment of the admissibility of the Referral

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

33. In this respect, the Court refers to Article 48 of the Law which provides that:

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

34. In relation to this, the Court notes that the Applicant has specified the concrete act of the public authority that he challenges, namely, the Judgment (Rev. no. 195/2013, of 10 January 2014) of the Supreme Court, as required by Article 48 of the Law. However, the Court notes that the Applicant did not refer to any right or freedom guaranteed by the Constitution which could have allegedly been violated by the Supreme Court.

35. The Court also notes that in his Referral, the Applicant did not state anything in relation to what he is requesting from the Constitutional Court or what the statement of relief sought by his Referral is.

36. In this regard, the Court refers to Rule 36 (1) (d) and 36 (2) (d) of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
> *[...]*

(d) the referral is prima facie justified or not manifestly ill-founded.

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

[...], or

(d) when the Applicant does not sufficiently substantiate his claim;
[...]

37. As mentioned above, the Applicant challenges the constitutionality of the Judgment (Rev. no. 195/2013, of 10 January 2014) of the Supreme Court, by which his request for revision was partially rejected, and, consequently, the Judgment (Ac. no. 678/2012, of 7 March 2013) of the Court of Appeal and the Judgment (C. no. 18/2004, of 11 July 2005) of the Municipal Court in Vushtrri, related to the Applicant's unjust enrichment, were upheld.

38. In relation to this, the Court notes that the Applicant despite his general allegations that "*the courts have been partial*"; he has not provided any procedural or substantial reasoning in his Referral. He did not refer to any right guaranteed by the Constitution hence he did not sufficiently substantiate his allegation that the courts have been partial.

39. The Court recalls that, at first, the regular courts had granted the Applicant's statement of claim, thus obliging the Municipality of Vushtrri to pay the requested amount of financial means to the Applicant, for the work he had performed as a member of the Commission. The regular courts had also approved the Applicant's request for execution and, as a result, he had received such financial means in his bank account.

40. However, the Court also recalls that, later, following the request for revision filed by the Municipality of Vushtrri, the Supreme Court had modified the decisions of the lower instance courts and annulled the decision on approving the request for execution. After this decision, the Municipality of Vushtrri had sued the Applicant due to unjust enrichment and requested a repay of the amount received by him.

41. Furthermore, the Court observes that the Municipal Court has granted the statement of claim of the Municipality of Vushtrri related to Applicant's "*unjust enrichment*" and obliged the latter to repay the amount of money he had received in his bank account, as well as the

interest rate set by the Court. This decision of the Municipal Court was then upheld by the Court of Appeal.

42. The Court further notes that the Supreme Court has also upheld the decision of the Municipal Court and that of the Court of Appeal as regards the Applicant's "*unjust enrichment*", by modifying them only in relation to the manner of the calculation of legal interest rate. In its decision, the Supreme Court emphasized that:

> *"[...] the lower instance courts have correctly concluded that the respondent benefited materially without legal ground as per Article 210, para.1 and 2 of LOR, whereas according to paragraph 4 of this Article, obligation of returning the money is established also when you receive something having into account the legal ground, which later on ceased to exist. [...]"*

43. In this respect, the Court notes that the Basic Court, the Court of Appeal, and the Supreme Court have reasoned their decisions based on the legal provisions and responded to the Applicant's allegations related to the alleged "*essential violation of the provisions of the Law on Contested Procedure*", "*erroneous and incomplete determination of factual situation*" and "*erroneous application of substantive law*".

44. In this regard, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the public authorities, unless, and in so far as, they may have infringed the rights and freedoms protected by the Constitution (constitutionality).

45. The Constitutional Court also reiterates that it cannot act as a court of the fourth instance in relation to the decisions rendered by the regular courts or other public authorities. It is the duty and obligation 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, paragraph 28, European Court on Human Rights [ECHR]; see also Resolution on Inadmissibility in case no. KI70/11, of 16 December 2011, Applicants *Faik Hima, Magbule Hima, and Bestar Hima*).

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

47. The Court considers that the proceedings before the Municipal Court, the Court of Appeal, and the partial rejection by the Supreme Court of the Applicant's request for revision, have been fair and reasoned (See, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Application No. 17064/06, of 30 June 2009).

48. As a result, the Court considers that the general allegations of the Applicant that the regular courts have been partial, without referring to any right or freedom guaranteed by the Constitution, are not reasoned and substantiated, therefore being manifestly ill-founded.

49. Based on the abovementioned reasons, the Court concludes that, pursuant to Article 48 of the Law and Rule 36 (2) (d), the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (2) (d), on 10 August 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI69/14, Bajram Zogiani - Constitutional Review of Judgment, Rev. no. 276/2013, of the Supreme Court of the Republic of Kosovo of 15 November 2013

KI69/14, Resolution on Inadmissibility of 3 July 2015, published on 19 August 2015

Keywords: *Individual referral, administrative proceedings, equality before the law, the right to work, right to fair trial, passive legitimacy, legal succession, manifestly ill-founded referral*

The Supreme Court rejected as ungrounded the Applicant's request for revision regarding the damage which he suffered due to termination of his employment relationship. The Applicant complained to the Constitutional Court for violation of the right to work, fair and impartial trial and equality before the law.

The Constitutional Court noted that the Applicant only mentions the constitutional principles in general, but without supporting them with concrete evidence. The Constitutional Court emphasized that it is not its task to deal with errors of fact or law allegedly committed by the public authorities, unless and in so far as it may have infringed the rights and freedoms protected by the Constitution. The Constitutional Court declared the Referral as manifestly unfounded, in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI69/14
Applicant
Bajram Zogiani
Constitutional Review of the Judgment, Rev. no. 276/2013, of the Supreme Court of the Republic of Kosovo of 18 November 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Bajram Zogiani, with residence in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment (Rev. no. 276/2013of18November2013) of the Supreme Court, which rejected as ungrounded his request for revision.

3. The challenged decision was served on the Applicant on28 January 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo(hereinafter: the Constitution), namely "Article21[General *Principles],* Article24[Equality Before the Law*],* Article31[Right to Fairand Impartial Trial*],* Article32[Right to Legal Remedies*]* andArticle49[*Right to Work* and Exercise Profession*] and* his rights guaranteed byte European Convention of Human Rights(*hereinafter:*

ECHR*),* namely by Article6[Right to a fair trial*]* andArticle13[Right to *an e*ffective remedy*].”*

5. The Applicant also refers tithe Universal Declaration of Human Rights and the European Social Charter without citing any specific article of these two documents. He only refers to *“the rights of employees* to compensation" in general.

Legal basis

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

Proceedings before the Constitutional Court

7. On14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 6 May2014, the President of the Court by, Decision no. GJR. KI69/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI69/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

9. On 26 May2014, the Court notified the Applicant of the registration of the Referral and requested that he submits copy of the receipt, indicating the date when the Judgment (Rev. no. 276/2013, of18November2013) of the Supreme Court was served on him. On the same date, the Court sent copy of the Referral to the Supreme Court.

10. On29 May 2014, the Applicant submitted the document requested by the Court.

11. On12 September 2014, the Applicant, on his own initiative, submitted additional information to the Court.

12. On 26 June 2015, the President of the Court, by Decision no. GJR. KI69/14, appointed Judge Ivan Čukalović as Judge Rapporteur, replacing Judge Kadri Kryeziu whose mandate as Constitutional Court Judge ended on 26 June 2015. On the same date, the President of the Court, by Decision no. KSH. KI69/14, appointed herself as a member of the Review Panel, replacing Judge Ivan Čukalović.

13. On 3 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

14. Before 1999, the Applicant was employed in the publicly owned enterprise Electro Economy of Kosovo. He was employed on a contract of indefinite duration in the capacity of the Secretary of the division of "Montimi Kosova".

15. On 6September1990, the Electro Economy of Kosovo (Decisionno.1448) suspended the Applicant from work due to violations of work obligations, until the procedure on determination of alleged violations would be finished.

16. On14 September 1990, the Applicant filed an objection with the Electro Economy of Kosovo relevant bodies against the abovementioned decision.

17. On1 October 1990, the Electro Economy of Kosovo (Decisionno.1776) rejected as ungrounded the Applicant's objection and upheld the decision on his suspension from work. On the same date, the Electro Economy of Kosovo rendered another Decision (no.1769) by which the Applicant was dismissed from work.

18. In1991, the Applicant sued the Electro Economy of Kosovo before the Basic Court of the Joint Labour [the competent court on labour disputes], requesting the annulment of the Decision on his dismissal from work. According to the case file, the Applicant failed to receive a final decision regarding this lawsuit.

19. On 1 July1999, the Electro Economy of Kosovo was reconstituted into the Kosovo Energy Corporation (hereinafter: KEK). The Applicant took up a position in KEK equivalent to his previous position within the Electro Economy of Kosovo.

20. Subsequently, the Applicant filed a request with the Municipal Court in Prishtina for renewal of the case file that had not been decided by the previous competent court.

21. On 10 April 2006, the Municipal Court in Prishtina (DecisionC1. No.440/93) approved the Applicant's request for renewal of the case file.

22. After receiving the decision that the case file was renewed, the Applicant filed a claim with the Municipal Court in Prishtina against KEK. He requested the annulment of the Decision (no. 17690f1October1990) of the Electro Economy of Kosovo through which he was dismissed from work and the payment ofmonthlysalariesfrom1October1990, the date when he was dismissed, until1 July 1999, the date when he returned to his working place.

23. On 14May 2010, the Municipal Court in Prishtina (Judgment. C1. No.124/2006) approved the statement of claim of the Applicant as grounded and annulled sun lawful the Decision (no. 17690f1October1990) of the Electro Economy of Kosovo on dismissal of the Applicant from work. On that occasion, the Municipal Court in Prishtina obliged KEK to pay to the Applicant the monthly salaries due in arrears, in accordance with his statement of claim, including the costs of proceedings.

24. KEK filed an appeal against the Judgment of the Municipal Court with the Court of Appeal *"due to* substantial violations of the contested procedure provisions*, erroneous* and incomplete *determination of the* factual situation*, and erroneous application* of the substantive law". In the appeal, KEK requested that the Court of Appeal modifies the Judgment of the Municipal Court and rejects the Applicant's claimas ungrounded.

25. On14 June 2013, the Court of Appeal (JudgmentAc. No.5140/2012) approved the appeal filed by KEK and modified the Judgment of the Municipal Court with the following reasoning:

> *"[...] The legal stance of the first instance court on the approval of the claimant's statement of claim as fair and lawful is not approved by the Court of Appeal [...].*
>
> *[...] The Court of Appeal holds that now the respondent [KEK] is not a participant in the legal obligational relationship in this legal matter, is not a subject in the legal material relationship, from where derives the claimant's right and on this ground does not exist the legal succession between the former Kosova Mont Electro-economy of Kosovo [...] with now the respondent Kosovo Energy Corporation in Prishtina. Therefore, the respondent lacks real passive legitimacy in this legal matter, and for this reason, the statement of claim against the respondent is ungrounded. [...] In fact, the respondent is not in the capacity of the Employer in relation to the claimant, respectively the respondent's body did not take any unlawful action, by which the claimant would be injured by not receiving the personal income for the abovementioned*

period, but this damage was caused by unlawful actions of Kosova Mont Electro-economy of Kosovo, which was in capacity of an Employer and which compensated the claimant's personal income before the contested period [...]".

26. The Applicant filed a request for revision against the Judgment of the Court of Appeal with the Supreme Court *"due to* violation of the contested procedure provisions and erroneous application of the substantive law".

27. On 18 November 2013, the Supreme Court (Judgment Rev. no. 276/2013) rejected the request for revision filed by the Applicant as ungrounded by reasoning that:

"[...] The second instance court has correctly applied the provision of Article 201 para. 1 item (d) of LCP [Law on Contested Procedure] *when it modified the Judgment of the first instance court and rejected claimant's statement of claim as ungrounded, as a new reality in Kosovo has been created after the war, and now the respondent cannot be a party in the proceedings, because the claimant was fired by the decisions of Electro-economy of Serbia, the decision of the RS of Serbia, published in the (Official Gazette of RS of Serbia", no. 19.7.1990) at the time when the leading structure was changed and the interim management was imposed.*

[...]

The allegations in the revision, that by the very fact that after the war, the claimant's employment relationship with the respondent was extended in the same working place, there is an obligation of the respondent for compensation of damage the claimant suffered, due to termination of his employment relationship in unlawful manner, by the fact that the respondent is not responsible, namely it does not have any obligation for compensation of unpaid personal income, which damage was caused by illegal actions of the former "Kosova Mont" Electro-economy of Kosovo [...]".

Applicant's allegations

28. The Applicant claims that the Supreme Court, by rejecting his request for revision, has *"violated* the rights and interests under the employment relationship*, protected* by the Constitution and laws".

29. Consequently, the Applicant alleges that the Supreme Court has violated his rights guaranteed by the Constitution and the ECHR in

regards to *"general principles,* equality before the law, the right to fair and impartial trial*,* the right to legal remedies *and* the right to work and exercise the profession".

30. In relation to these allegations, the Applicant states that "I base *my request* also *on* the Judgment of the Municipal Court in PrishtinaC1. No. 124/2006*,* dated14.05.2010by which [...*]* it was determined that KEK is the inheritor and successor of all assets but also *of* the rights and obligations of *Electro-economy of Kosovo".* In this regard, he requests from Court that *"based on* this *fair* Judgment of the Municipal Court*, I* request the payment of my salaries [...*]".*

31. The Applicant alleges that his case is similar tocaseKI08/09(See, KI08/09, *The Independent Union of Workers of IMK Steel Factory in Ferizaj*, the Judgment of17December2010). Regarding this case, the Applicant refers toparagraphs19, 20, 21, 48, 51, 60and66 of this Judgment.

32. The Applicant has also submitted to the Court several decisions of the regular courts in Kosovo which, according to him, are similar or identical to his case and for the same lawsuit the regular courts have decided *"in* favor of the claimants*".* Based on these decisions, he requests the Court to *"apply* the case law in order that similar cases are decided in the same way *and not that I am* discriminated against."

33. Finally, the Applicant addresses the Court with the following request:

> *"[...]*
> *a) to declare my Referral admissible, and*
> *b) to act in accordance with Judgment C1 No. 124/2006, of the Municipal Court in Prishtina, dated 14.05.2010, which approved my statement of claim and for this I request: the payment of monthly salaries starting from the date of termination of my employment relationship on 01.10.1990 until the date of my reinstatement to work on 01.07.1999 [...]".*

Assessment of the admissibility of the Referral

34. The Court first examines hether the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure have been met.

35. In this respect, the Court refers toArticle48of 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".

36. In addition, the Court refers to Rule36(2) (b) and(d) of the Rules of Procedure, which provide that:

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

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or [...]

(d) the Applicant does not sufficiently substantiate his claim.

37. As stated above, the Applicant challenges the Judgment(Rev. no. 276/2013, of18November2013) of the Supreme Court alleging violations of his rights pertaining to general principles, equality before the law, the right to fair and impartial trial, the right to legal remedies, the right to work and exercise a professionals guaranteed by the Constitution and the ECHR, respectively.

38. In the present case, the Court notes that, in essence, the Applicant's main request is to uphold the Judgment (C1. no. 124/2006, of 14 May 2010) of the Municipal Court in Prishtina, which was in his favor and which, according to the Applicant, "*is a* fair judgment."

39. In this regard, the Court notes that the Court of Appeal reasoned its decision when it modified the Judgment of the Municipal Court and rejected the statement of claim of the Applicant as ungrounded, referring to the provisions of the law. Moreover, the Court also notes that in the assessment procedure of the Applicant's request for revision, the Supreme Court reasoned its decision regarding the specific allegations of the Applicant brought against the Judgment of the Court of Appeal.

40. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegations of a substantial violation of the contested procedure provisions and of the erroneous application of the material law, allegedly committed by the Court of Appeal. In its Judgment, the Supreme Court pointed out that:

"[...] in the present case [the claim that] *there is continuity of claimant's employment relationship with the respondent [KEK]*

and that the respondent has passive legitimacy of the parties to the dispute as it is the legal successor of the former company where the claimant worked, is inadmissible, due to the fact that the party has subject matter legitimacy only if it is participating in the legal material relationship, from which the dispute has arisen. The respondent has no passive legitimacy in this case as it has not terminated the claimant's employment relationship and it is not a party to the legal material relationship, so that the claimant is not entitled to seek legal protection of the violated subjective right [...] ".

41. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the public authorities, unless and in so far as it may have infringed the rights and freedoms protected by the Constitution (constitutionality).

42. The Constitutional Court reiterates that it is not to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis, Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28; see also Constitutional Court in case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

43. The Constitutional Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See, *inter alia* case *Edwards u. United Kingdom*, Application No. 13071/87, Report of the European Commission of Human Rights, adopted on 10 July 1991).

44. The Court finds that the proceedings before the Court of Appeal and the Supreme Court have been fair and reasoned (See, *mutatis mutandis*, Shub *vs. Lithuania,* No. 17064/06, ECHR, Decision of 30 June 2009).

45. In addition, the Court notes that the Applicant alleges that his case is similar toCaseno.KI08/09, (See, CaseKI08/09, *the Independent Union of Workers of IMK Steel Factory in Ferizaj*, Judgment of17December2010). However, he does not provide any additional argument or clarification regarding this allegation.

46. Based on the submitted documents and the conducted procedures, the Court considers that the Applicant's Referral differs from the aforementioned Judgment considering that the latter concerned then

on-execution of a decision which had become final and as such had become resjudicata; whereas, the Applicant's case does not concern the non-execution of a final decision but concerns the constitutional review of the contested decision of the Supreme Court, which the Applicants dissatisfied with.

47. Accordingly, the Court finds that the Applicant's allegation, that his case is similar to case no. KI08/09is ungrounded.

48. Finally, the Court notes that the Applicant has also submitted several decisions of the regular courts in Kosovo, which he has qualified as *"examples"* based on which this Court must allegedly actin order to "*apply* the case law [...]."

49. In relation to this submission, the Court emphasizes that "[...] save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of the domestic law by 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; Gergório de Andrade v. Portugal, no. 41537/02, para. 36, 14 November 2006; and Ādamsons, cited above, para. 118)."

50. Moreover, the Court observes that the attached decisions of the regular courts pertain to different proceedings before the regular courts, which do not necessarily represent final decisions and as such are not relevant for the review of the constitutionality of the challenged decision.

51. Accordingly, the Court finds that the Applicant's allegation, that his case is similar to the attached decisions of the regular courts is ungrounded.

52. In sum, the Court considers that the Applicant's allegations of violation of his rights and freedoms guaranteed by the Constitution and the ECHR are ungrounded and unsubstantiated, and therefore they are manifestly ill-founded.

53. For the reasons above, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights and that the Applicant did not sufficiently substantiate his claims.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and 36(2) (b) and (d), on 10 August 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Arta Rama-Hajrizi

KI180/14, Applicant Fehmi Pajaziti - Constitutional Review of Decision CPP. no. 5/2014, of the Supreme Court of Kosovo, of 9 September 2014

KI180/14, Resolution on Inadmissibility of 8 July 2015, published on 19 August 2015

Keywords: *Individual referral, administrative procedure, right to property, disability pension, manifestly ill-founded referral*

The Supreme Court of Kosovo approved as grounded the request for revision filed by the employer (KEK) of the Applicant for not compensating some payments to Applicants regarding the early disability pension. The Applicant alleges that the Supreme Court violated the right to fair and impartial trial and the right to protection of property as guaranteed by the Constitution, without reference to any constitutional provision in particular.

The Constitutional Court found that the Applicant has not provided any procedural or substantive justification and that he only claims constitutional violations, without explaining further how those violations occurred. Moreover, the Constitutional Court found that the proceedings before the regular courts provided to Applicant fair and impartial trial. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case no. KI180/14
Applicant
Fehmi Pajaziti
Constitutional Review of the Decision CPP. no. 5/2014 of the Supreme Court of Kosovo, of 9 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Fehmi Pajaziti, from village Hajvali, Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision (CPP. No. 5/2014, of 9 September 2014) of the Supreme Court of Kosovo, by which his request for repetition of proceedings regarding his claim for compensation of a certain amount of financial means, was rejected.

3. The challenged decision was served on the Applicant on 31 October 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which has allegedly violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely *"Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] in conjunction with Article 1 of Protocol 1 of the European Convention of Human Rights (hereinafter: ECHR)."*

Legal basis

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

Proceedings before the Constitutional Court

6. On 15 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 13 January 2015, the President of the Court by Decision GJR. KI180/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI180/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 20 January 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

10. From the case file it follows that the Applicant was employed at Kosovo Energy Corporation (hereinafter: KEK), without his job position being specified.

11. On an unspecified date, the Applicant filed a request for early retirement-disability pension with KEK.

12. On 1 November 2008, KEK (Decision no. 171/133) approved the Applicant's request for early retirement-disability pension and accepted to pay to the Applicant a certain amount of financial means per month, on behalf of the pension, starting from 1 November 2003 until 1 December 2008.

13. After 1 December 2008, KEK stopped the payment of that certain amount of financial means.

14. As a result of this action of KEK, the Applicant filed a claim against the latter with the Municipal Court in Prishtina. He requested a compensation of monthly payments for continuing disability pension from 1 December 2008 until 30 October 2009, respectively, until the date when the Applicant enters into the category of the old-age pension.

15. On 2 November 2009, the Municipal Court in Prishtina (Judgment C1. No. 423/2008) approved the Applicant's statement of claim as grounded and obliged KEK to pay to the Applicant the requested amount of financial means with relevant legal interest. According to the Municipal Court, KEK had unlawfully interrupted the monthly payments.

16. KEK filed an appeal against the Judgment of the Municipal Court with the District Court in Prishtina.

17. On 22 April 2011, the District Court in Prishtina (Judgment Ac. no. 618/2010), rejected as ungrounded the appeal of KEK and upheld the Judgment of the Municipal Court.

18. Against this Judgment, KEK filed a request for revision with the Supreme Court *"due to substantial violation of the contested procedure provisions and erroneous application of the substantive law",* with a proposal that the two decisions of the lower instance courts be modified and the Applicant's statement of claim be rejected as ungrounded.

19. On 26 September 2012, the Supreme Court (Judgment Rev. no. 262/12) approved as grounded the request for revision filed by KEK, modified the Judgment of the District Court and of the Municipal Court and rejected the Applicant's statement of claim as ungrounded. In its reasoning, the Supreme Court stated:

> "*[...] the legal stance of the lower instance courts cannot be upheld as correct and lawful, because, according to assessment of this Court, in respect to the determined factual situation, the substantive law has been erroneously applied.*
>
> *Based on the Decision no. 171/133 of 23.10.2003, the claimant* [Applicant] *filed an application for benefiting the pension – the category I of disability, and according to this decision, the payment of the pension was effective from 01.11.2003 and shall end on 01.12.2008*

The Supreme Court assesses that after 60 month payment of these wages, the respondent [KEK] *has no further liability, given that it fulfilled its legal liability deriving from the abovementioned decision [...].”*

20. On 20 February 2013, the Applicant filed a request for repetition of proceedings with the Supreme Court.

21. On 9 September 2014, the Supreme Court (Decision CPP. No. 5/2014) rejected as ungrounded the Applicant’s request for repetition of proceedings by reasoning that:

“[...] The claimant filed his request (proposal) for repetition of the proceeding due to erroneous and incorrect determined factual situation, erroneous application of the substantive law and due to breach of the right by termination of pay of the disability pension which have not been provided in any legal provision on extraordinary remedy of repetition of the proceedings.

Article 232 of LCP [Law on Contested Procedure] *provides that the proceeding finalized by a final judgment or ruling of the court may be repeated upon the motion filed by the party in cases foreseen under items (a), (b), (c), (d), (e), (f) and (g) of aforementioned Article. According to the request of the Applicant on repetition of the proceeding, none of legal conditions to repeat the proceeding provided under aforementioned Article have been fulfilled”.*

Applicant’s allegations

22. The Applicant alleges that the Supreme Court has violated his right to fair and impartial trial and the right to protection of property, as guaranteed by the Constitution, the ECHR respectively.

23. The Applicant does not provide any additional explanation regarding these allegations. He only provides a description of the facts in his referral, and then addresses the Court with the following request:

“[...] to approve the Referral and to annul Decision CPP no. 5/201, of the Supreme Court and Judgment Rev. no. 262/12”.

Assessment of the admissibility of the Referral

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

25. In this respect, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

Article 48 of Law

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

Rule 36 of the Rules of Procedure

> *"[...] (1) The Court may consider a referral if: [...] (d) the referral is prima facie justified or not manifestly ill-founded.*
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: [...] (d) the Applicant does not sufficiently substantiate his claim".*

26. The Court recalls that the Applicant challenges Decision (CPP. No. 5/2014, of 9 September 2014) of the Supreme Court, by claiming that it has violated the right to fair and impartial trial and the right to protection of property, guaranteed by the Constitution and the ECHR.

27. In fact, the Applicant merely states in a general manner that these rights have been violated and requests the annulment of the challenged Decision and the Judgment (Rev. no. 262/2012, of 26 September 2012) the Supreme Court.

28. The Court notes that in his Referral, the Applicant has not provided any procedural or substantive justification; he only states the abovementioned allegations without explaining further how those violations occurred.

29. In this respect, the Court notes that initially, the Municipal Court and the District Court approved the Applicant's statement of claim and ordered KEK to make the payment for months that were disputed, namely from 1 December 2008 to 30 October 2009 .

30. However, the Court also notes that the Supreme Court (Rev. No. 262/2012, of 26 September 2012) approved the request for revision submitted by KEK, filed in capacity of the respondent, and rejected the Applicant's statement of claim. In that case, the Supreme Court found that the lower instance courts have erroneously applied the substantive law and that KEK has fulfilled every obligation towards the Applicant on the date when it stopped the payments on behalf of the disability pension. The Supreme Court justified its findings based on

the Decision (No. 171/133, of 23 October 2003) of KEK whereby *"the payment of pension started on 11.01.2003 and ended on 01.12.2008."*

31. Moreover, the Court notes that the Supreme Court rejected as ungrounded the Applicant's request for repetition of the proceedings in his case, with the reasoning that *"[...] none of the legal requirements set forth in Article 232 of LCP have been fulfilled [...]."*

32. The Court considers that the proceedings before the Supreme Court were fair and that both decisions are reasoned and substantiated.

33. Therefore, the Constitutional Court considers that the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicant had a fair trial (See, *inter alia,* Report of European Commission of Human Rights in case *Edwards v. United Kingdom,* No. 13071/87, of 10 July 1991; and, *mutatis mutandis, Shub v. Lithuania,* ECHR Decision No. 17064/06, of 30 June 2009).

34. Moreover, the Applicant has not clearly indicated how and why the challenged decision, by which his request for repetition of proceedings was rejected constitutes a violation of his individual rights and freedoms guaranteed by the Constitution and ECHR and he has not submitted evidence to substantiate the claim for such a violation.

35. 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 public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

36. The Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts, or other public authorities. It is the role of the regular courts or of other public authorities, where it is possible, to interpret and apply the pertinent rules of both procedural and substantive law. (See: *mutatis mutandis*, *Garcia Ruiz vs. Spain,* No. 30544/96, para. 28, European Court of Human Rights [ECHR], Judgment of 21 January 1999; see also Resolution on Inadmissibility in case KI70/11, of 16 December 2011, *Applicants: Faik Hima, Magbule Hima and Bestar Hima*)

37. The Court considers that the Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights guaranteed by the Constitution and the ECHR (See: *Vanek vs. Slovak Republic,* ECHR Decision, No. 53363/99 of 31 May 2005) and he has not specified how the Articles of the

Constitution and of ECHR, invoked by him, support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

38. In sum, the Court considers that the Applicant's allegations of violation of his right to a fair and impartial trial and protection of property are unsubstantiated and not proven, and thus, are manifestly ill-founded.

39. Based on the reasons above, the Court considers that in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (2) (d), on 10 August 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Arta Rama-Hajrizi

KI20/15, Applicant Non-Governmental Organization FINCA Kosovo- Constitutional Review of Judgment Rev. no. 205/2014, of the Supreme Court, of 14 October 2014

KI20/15, Resolution on Inadmissibility of 31 July 2015, published on 19 August 2015

Keywords: *Individual referral, manifestly ill-founded referral, interim measure, labor dispute, compensation of salaries, reinstatement to work, the right to work and exercise profession, the right to fair and impartial trial*

The Supreme Court rendered decision obliging the Applicant to reinstate to work their former employee and to compensate him for unpaid salaries. The Applicant complained to the Constitutional Court mainly for violation of the right to work and exercise profession, as guaranteed by Article 49 of the Constitution and the right to a fair trial guaranteed by Article 6 of the Convention. The Applicant also requested the imposition of interim measure.

The Constitutional Court found that the Applicant failed to constitutionally substantiate how and why the Supreme Court violated their rights guaranteed by the Constitution and the Convention. The Constitutional Court noted that the Applicant's allegations were within the scope of legality and not of constitutionality. The Constitutional Court also rejected the Applicant's request for imposition of interim measure. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI20/15
Applicant
Non-Governmental Organization FINCA Kosovo
Request for Constitutional Review of Judgment Rev. no. 205/2014, of the Supreme Court, of 14 October 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is the Non-Governmental Organization FINCA Kosovo, which is represented by Mr. Vigan Rogova, a lawyer.

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 205/2014, of the Supreme Court of the Republic of Kosovo, of 14 October 2014 (hereinafter: the Supreme Court), which was served on the Applicant on 9 December 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment Rev. no. 205/2014, of 14 October 2014, regarding the Applicant's allegations of violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, in conjunction with Article 6 [Right to a fair trial] of the European Convention of Human Rights (hereinafter: ECHR).

4. The Applicant also requests the Court to impose Interim Measure, regarding the suspension of the enforcement proceedings.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution, Article 22, 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 54, 55 and 56 of the Rules of Procedure.

Proceedings before the Constitutional Court

6. On 25 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 10 April 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 12 April 2015, the President of the Court by Decision no. GJR. KI20/15, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI20/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Ivan Čukalović (member).

9. On1July2015, the President of the Court by Decision no. GJR. KI20/15, appointed Judge Ivan Čukalović as Judge Rapporteur replacing Judge Kadri Kryeziu, whose mandate as a judge ended on26June2015, and by Decision KSH. KI20/15, the President of the Court replaced Judge Ivan Čukalović -as a member to the Review Panel.

10. On 6 July 2015, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of Facts

11. On 25 September 2000, the Applicant concluded an employment contract with the employee SH.K. regarding the position of the loan analyst.

12. On 21 March 2011, the Applicant decided to terminate to the employee the employment contract, because of delays in the repayment of loans.

13. On 18 May 2011, the employee filed the claim with the Municipal Court in Prizren against the decision on termination of the

employment contract, requesting the annulment of the decision as unlawful, and the reinstatement to her working place.

14. On 13 September 2012, the Municipal Court in Prizren (Judgment, C. no. 290/11) with respect to the claim of the employee, decided: I. To partly approve the claim of the employee; II. To annul as unlawful the Applicant's decision of 21 March 2011 regarding the termination of the employment contract of the employee; III. To oblige the Applicant to pay to claimant 14 (fourteen) unpaid salaries, in the monthly amount of € 1,000.00 and in a total amount of € 14,000.00; IV. To oblige the Applicant to pay to claimant the costs of the proceedings, in the amount of € 606.00; and V. To reject the statement of claim of the employee for the reinstatement to her working place.

15. Against this judgment, the employee filed an appeal with the Court of Appeal of the Republic of Kosovo (hereinafter: the Court of Appeal), regarding item III and V of the enacting clause of the Judgment.

16. Against the Judgment of the Municipal Court of Prizren, the Applicant filed the appeal within legal deadline, due to substantial violation of the contested procedure provisions, erroneous determination of factual situation and erroneous application of the substantive law.

17. On 7 April 2014, the Court of Appeal (Judgment Ac. No. 4342/2012), rejected as ungrounded the appeals filed by the employee and the Applicant, and upheld in entirety the Judgment of the Municipal Court in Prizren.

18. The Applicant submitted a revision to the Supreme Court against the Judgment of the Court of Appeal, with the proposal that the challenged judgment be modified or quashed, and the case be remanded for retrial.

19. The employee also filed a request for revision due to substantial violation of the contested procedure provisions and erroneous application of the substantive law, requesting the modification of item III and V of the Judgment, regarding the compensation of all unpaid salaries and her reinstatement to the working place.

20. On 14 October 2014, the Supreme Court rendered Judgment Rev. no. 205/2014 and decided: to reject the revision submitted by the Applicant under item I and II of the Judgment; to approve the Applicant's revision in item III of the Judgment, with respect to compensation of unpaid salaries; to quash the judgments of the lower instance courts under item IV of the enacting clause and to remand the case to the first instance court for reconsideration and retrial for this

item; to approve the revision of the employee regarding the item V of the enacting clause of the Judgment for the reinstatement to the working place.

Applicant's allegations

21. The Applicant alleges that the Supreme Court violated its constitutional rights, guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution, because *"... The Supreme Court of Kosovo by Judgment Rev. no. 205/2014 of 9 December 2014 deprived the Applicant of the constitutional rights that derive from Article 49 of the Constitution of the Republic of Kosovo -Right to Work and Exercise Profession."*

22. The Applicant also refers to the Judgment of the Constitutional Court in Case KO131/12.

23. Furthermore, the Applicant alleges that *"the Judgment of the Supreme Court of Kosovo, by which it decided on the reinstatement of the claimant to her working place, was rendered contrary to Article 80 of the Law on Labour, which has to do with "the court decision regarding the termination of the employment contract".*

24. Moreover, the Applicant requests the Court: "*To declare the Referral admissible; To hold that there has been violation of Article 49 of the Constitution of the Republic of Kosovo, in conjunction with Article 6 of the European Convention of Human Rights; To declare invalid Judgment Rev. No. 205/2014 of the Supreme Court of Kosovo, of 14 October 2014; To remand the Judgment of the Supreme Court for reconsideration in accordance with the Judgment of this Court; To impose the Interim Measure on suspension of all enforcement actions and procedures."*

Admissibility of the Referral

25. Before considering the Referral filed, the Constitutional Court shall first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

26. Regarding this Referral, 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. In addition, Rule 36 (1) (d) of the Rules of Procedure, provides:

(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

28. Furthermore, Rule 36 (2) of the Rules of Procedure provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim.

29. In the present case, the Court notes that the Applicant alleges that the Supreme Court, by its Judgment Rev. no. 205/2014, has violated the Applicant's rights guaranteed by Article 49 of the Constitution, in conjunction with Article 6 of the ECHR, alleging that the reinstatement of the claimant to her workplace and her compensation is contrary to the abovementioned provisions, and contrary to Article 80 of the Law on Labor (No. 03/L-212) of the Republic of Kosovo.

30. Regarding the Applicant's allegation of violation of Article 49 of the Constitution, in conjunction with Article 6 of the ECHR, the Court considers that such an allegation does not represent the constitutional basis and a compelling argument that would conditionally allow the Court to go further into the assessment of the merits of the Referral. The Applicant has not clarified how and why the Supreme Court decided, in violation of the Applicant's rights guaranteed by the aforementioned provisions of the Constitution and of the ECHR.

31. The Court reiterates that in order to have a reasoned case that refers constitutional violation, the Applicant must show and prove that the proceedings before the regular courts, namely before the Supreme Court, viewed in their entirety, have not been applied in a correct manner and in accordance with the requirements of a fair trial, or that other violations of the constitutional rights should have been committed by the Supreme Court during the trial.

32. However, as to the Applicant's allegations regarding violation of the substantive law provisions, the Court considers that such an allegation is within the scope of legality and not of constitutionality.

33. The Court recalls that it is not its task to assess the legality of decisions of the regular courts, as in the present case the interpretation of the law, if an order for compensation or reinstatement of the claimant to work was based on the law. The contractual and work relationships are regulated by law, and the interpretation of the provisions of these laws is also the jurisdiction of the regular courts, in particular of the Supreme Court, as the highest instance of regular judiciary.

34. In this regard, the Court should not act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *Garcia Ruiz vs. Spain,* No. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-1).

35. The Court considers that the reasoning of the Supreme Court is comprehensive and contains detailed reasoning, on why should the judgments of the lower instance court, be upheld, quashed or modified in some items of the enacting clause of judgments.

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

37. Therefore, the Court in the present case cannot consider that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary (See, *mutatis mutandis, Shub vs. Lithuania*, Decision of ECHR on the admissibility of application no. 17064/06, 30 June 2009).

Assessment of the Request for Interim Measure

38. The Applicant also requests the Court to impose Interim Measure, namely to suspend all enforcement actions and proceedings related to his case.

39. In this respect, the Court refers to Rule 55 (4) of the Rules of Procedure, it is necessary 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"*
> *[...]*

40. The Court further finds that, as the Applicant's Referral is manifestly ill-founded and is declared inadmissible, the request for Interim Measure cannot be subject to review before the Court, therefore, the request for imposition of Interim Measure should be rejected.

41. For the foregoing reasons, the Court concludes that the Applicant's Referral is manifestly ill-founded and is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 27 and 48 of the Law and Rules 36 (1, d), 36 (2, d), 55, 55 and 56 (2, 3) of the Rules of Procedure, on 31 July 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY this Decision to the Parties;

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

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI55/14, Applicant Baton Morina - Constitutional Review of Notification, KMLP. I. no. 1/14, of the Office of the Chief State Prosecutor of 7 March 2014

KI55/14, Resolution on Inadmissibility of 10 August 2015, published on 20 August 2015

Keywords: *Individual referral, equality before the law, adjudicated matter, the right to fair and impartial trial, manifestly ill-founded referral, the public prosecutor's impartiality, reopening of criminal proceedings*

The Applicant was sentenced for commission of a criminal offence to imprisonment of 12 (twelve) years and this sentence was upheld by the Supreme Court. The Applicant requested the reopening of criminal proceedings alleging lack of impartiality of the public prosecutor, but his request was rejected by the regular courts of all instances. The Applicant filed a complaint with the Constitutional Court alleging violation of the right to fair and impartial trial and equality before the law, guaranteed by the Constitution.

The Constitutional Court found that on a part of the Applicant's allegations, had already issued decision and that there was no ground to render a new decision. Whereas, on other allegations, the Constitutional Court found that the regular courts and the public prosecutor had reasoned their decisions not to allow the reopening of criminal proceedings and that the Applicant's allegations, raise issues of legality and not of constitutionality. The Referral was declared inadmissible in accordance with Rules 36 (2) (d) and 36 (3) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI55/14
Applicant
Baton Morina
Constitutional Review of Notification, KMLP. I. no. 1/14, of the Office
of the Chief State Prosecutor of 7 March 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Baton Morina from Gjakova (hereinafter: the Applicant), represented by Mr. Teki Bokshi, a lawyer from Gjakova.

Challenged decision

2. The Applicant challenges the Notification (KMLP. I. no. 1/14, of 7 March 2014) of the Office of the Chief State Prosecutor, by which his request for protection of legality regarding the reopening of criminal proceedings in his case was rejected.

Subject matter

3. The subject matter is the Applicant's request for constitutional review of the challenged decisions, which allegedly violated his rights, guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely *"Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial], paragraph 1."*

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 26 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 April 2014, the President, by Decision no. GJR. KI55/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI55/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 28 April 2014, the Court notified the Applicant of the registration of the Referral and requested that he submits a power of attorney for Mr. Teki Bokshi. On the same date, the Court sent a copy of the Referral to the Court of Appeal.

8. On 4 June 2014, the Applicant submitted the power of attorney to the Court.

9. On 24 September 2014, the Court requested from the Applicant to specify the challenged decisions and to submit to the Court the copies of the decisions related to the case.

10. On 9 October 2014 the Applicant responded to the Court's request by providing some additional clarifications regarding the Referral submitted to the Court, but he did not submit the copies of the challenged decisions.

11. On 20 January 2015, the Court sent another letter to the Applicant, requesting specifically that he submits to the Court both decisions referred by him in the Referral, which he had not yet submitted to the Court, namely:

    a) Decision (PK. no. 198/13 of 20 November 2013) of the Basic Court in Peja; and
    b) Decision (PN. no. 736/13, of 10 December 2013) of the Court of Appeal.

12. On 2 February 2015, the Applicant addressed the Court with the following request: *"I request the honorable Court to have understanding and as soon as I have obtained the documents, I will immediately submit them to the Court"*.

13. On 18 February 2015, the Court sent a copy of the Referral to the Office of the Chief State Prosecutor.

14. On 20 February 2015, the Court sent another letter to the Applicant, informing him that the Court will proceed with the deliberation of the Referral based on available information and documents, in case he would not submit the documents requested by the Court within a time limit of 7 (seven) days, from the day of the receipt of this letter.

15. On 5 March 2015, the Applicant submitted the requested documents to the Court.

16. On 26 June 2015, the President of the Court, by Decision no. GJR. KI69/14, appointed Judge Ivan Čukalović as Judge Rapporteur, replacing Judge Kadri Kryeziu whose mandate as Constitutional Court Judge ended on 26 June 2015. On the same date, the President of the Court, by Decision no. KSH. KI69/14, appointed herself as a member of the Review Panel, replacing Judge Ivan Čukalović.

17. On 2 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

18. On 23 June 2006, the District Court in Peja (Judgment P. no. 80/2006) found the Applicant guilty of having committed two criminal offences. The Applicant was sentenced to imprisonment of 4 (four) years.

19. The Applicant filed an appeal against the abovementioned Judgment with the Supreme Court, requesting *"to annul the appealed Judgment and to remand the case to the first instance court for retrial*." The District Public Prosecutor in Peja also filed an appeal against the same Judgment, with the request "*that the sentence of 4 (four) years imprisonment be replaced by a more severe sentence."*

20. On 19 April 2007, the Supreme Court (Judgment Ap. no. 582/06) rejected the appeal of the Applicant and accepted the appeal of the District Public Prosecutor. On that occasion, the Supreme Court

modified the Judgment of the District Court in Peja only in relation to the decision on the sentence, and sentenced the Applicant from 4 (four) years to 12 (twelve) years imprisonment.

21. On 31 December 2007, the Supreme Court (Judgment Pkl no. 78/2007) rejected the Applicant's request for protection of legality, by assessing that "*the first and second instance have correctly determined the facts, that there were no substantial violations of the provisions of the criminal procedure and that the provisions of the criminal law were correctly applied.*"

Applicant's first request for reopening of criminal proceedings before the regular courts

22. On 29 January 2011, the Applicant filed his first request for reopening of criminal proceedings with the District Court in Peja, alleging that *"in the procedure of adjudication regarding my appeal to the Supreme Court [...] the prosecutor of the case should have been disqualified due to his lack of impartiality and his subjectivity."*

23. On 13 September 2011, the District Court in Peja (Decision P. no. 80/06) rejected the Applicant's request for reopening of criminal proceedings, by reasoning that *"[...] the legal basis for reopening of criminal proceedings was not presented, as provided by Article 444 para. 2 of PCPCK* [Provisional Criminal Procedure Code] *[...]."*

24. The Applicant, against the Judgment of the District Court in Peja, filed an appeal with the Supreme Court.

25. On 13 October 2011, the Supreme Court (Judgment Pn. no. 530/2011) rejected the Applicant's appeal as ungrounded, reasoning it as follows:

> *"[...] the first instance court has correctly acted, when it rejected the request for reopening of criminal proceedings [...]. [...] from the minutes of the main hearing it cannot be seen that a request for disqualification of the prosecutor or of any of the participants in the conducted proceedings in this criminal matter was filed and that there are no indications that regarding the said prosecutor has been initiated any disciplinary or criminal procedure, related to the present case. In order to consider a legal basis for the reopening of criminal proceedings, pursuant to Article 442 par. 1, item 1 of PCPCK and under par. 2 of the same Article, it must be proven that the judgment ensued from a criminal offence committed by a person who undertook investigative actions or the prosecutor".*

Proceedings before the Constitutional Court in Case No. KI159/11

26. On 9 November 2011, the Applicant filed a Referral with the Constitutional Court [See, Case no. KI159/11, *Baton Morina,* Resolution on Inadmissibility of 16 July 2012] and requested a constitutional review of the Judgment (Pn. no. 530/2011, of 13 October 2011) of the Supreme Court.

27. The Applicant alleged before the Court violations of the right to a fair and impartial trial, the right to legal remedies as well as the right to respect the principle of legality and proportionality in criminal cases. The Applicant claimed, among others, that the actions of the District Public Prosecutor in Peja *"have had an essential impact on the case which was adjudicated to the detriment of the accused"* and that the District Public Prosecutor *"had misused his official position"* in the criminal proceedings initiated against him.

28. On 16 July 2012, the Court decided on Case no. KI159/11, by rejecting the Applicant's Referral for constitutional review of the said Judgment, as manifestly ill-founded. *Inter alia*, the Court reasoned that *"[...]it is not the jurisdiction of the Constitutional Court to assess the legality and accuracy of the evidence of the decisions issued by the regular courts [...]"* and that it "*does not have jurisdiction to repeat court proceedings or in any way to replace the Judgment of the Supreme Court by its own findings"*.

Applicant's second request for reopening of criminal proceedings before the regular courts

29. After the rendering of the abovementioned Resolution by this Court in Case no. KI159/11, the Applicant submitted a second request for reopening of criminal proceedings, this time to the Basic Court in Peja.

30. The Applicant justified his second request, by presenting the same allegations on the lack of impartiality of the District Public Prosecutor in Peja. He also claimed that *"[...] new facts which are likely to justify the innocence of the convict* [the Applicant] *have been discovered or for his conviction to be considered under a more lenient criminal provision, and for this purpose the statement of the witness should be considered as new evidence [...] "*.

31. On 20 November 2013, the Basic Court in Peja (Decision PK. No. 198/13) rejected the Applicant's second request for reopening of criminal proceedings as ungrounded by reasoning that:

"[...] in the present case the legal requirements for the reopening of the criminal proceedings in the case of convict Baton Morina have not been met [...], even if the abovementioned witness was heard earlier, and, even if he is heard now, that would not change the course of the criminal procedure against the convict [...]. Regarding the allegations [...] that the request for disqualification of the prosecutor of the case has not been decided upon, the review panel of this court, based on the case file and specifically on the minutes of the main hearing, it can be seen that no request for disqualification of the prosecutor or of any of the participants in the conducted proceedings of this criminal-legal matter was filed and that there are no indications that regarding the said prosecutor any disciplinary or criminal procedure, related to the present case, has been initiated; therefore, it is considered that there exists a legal basis for the reopening of the criminal proceedings, pursuant to Article 442 par. 1, item 1 of PCPCK, par. 2 of the same Article, when it is proven that the judgment ensued from a criminal offence committed by a person who undertook investigative actions or the prosecutor" [...] and in the present case this evidence is missing."

32. On 10 December 2013 the Court of Appeal (Decision PN. no. 736/13) rejected the Applicant's appeal against the Decision of the Basic Court in Peja and reasoned as follows:

"[...] the first instance court correctly assessed that the request of the convict's defence counsel for the reopening of the criminal proceedings is ungrounded, as, in the present case, the legal requirements for the reopening of the criminal proceedings, provided by Article 423 par.1 item 1.3, have not been met [...].

[...] the witness' testimony does not bring any new evidence, unknown so far, and which would be the legal reason for granting the reopening of the criminal proceedings, and which would prove the innocence of the convict".

33. On 7 March 2014, the Office of the State Prosecutor (Notification KMLP. I. no. 1/14) rejected the Applicant's request for protection of legality, filed against the Decision of the Court of Appeal and the Decision of the Basic Court in Peja, with the reasoning that there was no legal ground for filing a request for protection of legality.

Applicant's allegations

34. The Applicant alleges that the regular courts violated his rights guaranteed by the Constitution, namely Article 21 [General

Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] paragraph 1.

35. Regarding these allegations, the Applicant states that *"[...] he was discriminated against, because he was defended by lawyer S.D."* and the State Prosecutor had *"personal issues"* with him.

36. The Applicant further alleges that: *"[...] due to the appeal of the Public Prosecutor the judgment of the first instance was modified to the detriment of the accused, since his imprisonment was increased from 4 to 12 years, [...] from which it can be understood that the prosecutor [...] through exercising the authority of the prosecutor in all instances had influence that the accused Baton Morina is punished with the most severe sentence"*.

37. In conclusion, the Applicant addresses the Court with the following request:*"The annulment of Decision PK. no. 198/13 of the Basic Court in Peja of 20.11.2013, Decision PN. no. 736/13 of the Court of Appeal of Kosovo of 10.12.2013 and of Notification KMLP. I. nr. 1/14 of the State Prosecution of Kosovo of 7.03.2014"*.

Assessment of the admissibility of the Referral

38. 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 Procedures of the Court.

As to the Applicant's allegations regarding his first request for reopening of the criminal proceedings

39. As mentioned above, the Applicant alleges that his rights guaranteed by Articles 21, 22, 24 and 31 of the Constitution have been violated, because, according to him, the District Public Prosecutor in Peja exceeded his authority and did not act in an impartial manner during the criminal proceedings in his case.

40. In relation to this, the Court notes that the Applicant, as he did in his first Referral (Case no. KI159/11) filed with the Court, refers to the same arguments regarding the lack of impartiality of the District Public Prosecutor in Peja.

41. The Court also notes that the Applicant, although he formally challenges the Notification (KMLP. I. No. 1/14, of 7 March 2014) of the State Prosecutor, in substance, he challenges the constitutionality of previous decisions of the regular courts, namely, the Judgment (P. No.

80/06 of 23 June 2006) of the District Court in Peja and Judgments (App. No. 582/06 of 19 April 2007; Pkl. No. 78/2007 of 31 December 2007; Pn. No. 530/2011, of 13 October 2011) of the Supreme Court.

42. In this regard, the Court considers that the Applicant's allegations are the same as the ones filed in his first Referral submitted to the Constitutional Court and are addressed against the same decisions, the constitutionality of which this Court has already assessed when rendering the Resolution on Inadmissibility in Case no. KI159/11.

43. Therefore, in regards to these repeated allegations of the Applicant, the Court refers to Rule 36 (3) (d) of the Rules of Procedure which provides:

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

44. As mentioned above, the Court notes that it has already dealt with these allegations of the Applicant in Case no. KI159/11 and rejected them as manifestly ill-founded. On that occasion, the Court, after the constitutional review of the Judgment (Pn. no. 530/2011 of 13 October 2011) of the Supreme Court, found that there were no convincing arguments and evidence that may lead to the conclusion that this Judgment or other decisions were evidently rendered in an unfair or arbitrary manner.

45. Consequently, based on Rule 36 (3) (d) of the Rules of Procedure, the Court concludes that it has already issues a Decision on the matter concerned and that this part of the Referral does not provide sufficient grounds for a new Decision.

As to the Applicant's allegations regarding his second request for reopening of criminal proceedings

46. With regard to the Applicant's allegations of a violation of his rights guaranteed by the Constitution by the State Prosecutor's Office's (Notification KMLP. I. No. 1/14, of 7 March 2014) the Court refers to

Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, which provide:

Article 48 of the Law:

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

Rule 36 (2) (d) of the Rules of Procedure:

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

47. In this respect, the Court notes that the Applicant, in his second request for the reopening of the criminal proceedings, again alleged that the Public Prosecutor of the District Court in Peja should have been disqualified and as a result of his non-disqualification a serious violation of the criminal procedure provisions and Article 31 of the Constitution had occurred. In addition, the Applicant justified his second request for reopening of the criminal proceedings by stating that the questioning of new witnesses would have changed the factual situation, and that, therefore, his request to that effect should have been approved.

48. In addition, the Court notes that, when rejecting the Applicant's second request for reopening of the criminal proceedings, the regular court have addressed these allegations and responded to Applicant's requests.

49. More specifically, the Court notes that the Basic Court in Peja, when rejecting the Applicant's second request for reopening of the criminal proceedings, reasoned its decision by referring to the provisions of applicable law and responded to the Applicant's allegations.

50. In its decision, the Basic Court in Peja concluded that "*[...] even if the abovementioned witness was heard earlier and even if he is heard now, that would not change the course of the criminal procedure against the sentenced person [...].* In addition, the Municipal Court stated that the Applicant did not file "*any request for disqualification*

of the prosecutor" and that, consequently, there was no "*legal ground for reopening of the criminal proceedings, pursuant to Article 442, par 1. item 1, PCPCK*".

51. In addition, the Court notes that the Court of Appeal, when rejecting the Applicant's appeal, filed against the Decision of the Basic Court in Peja, reasoned its decision by referring to the provisions of applicable law and to the Applicant's submissions in appeal. The Court of Appeal fully supported the Decision of the Basic Court finding that "*the first instance court, correctly assessed that the request of the convict's defence counsel for reopening of criminal proceedings is ungrounded, as, in the present case, the legal requirements for reopening of criminal proceedings, provided by Article 423 par.1 item 1.3, have not been met."*

52. The Court further notes that the Office of the Chief State Prosecutor rejected the Applicant's request for protection of legality by reasoning that there was no legal ground for such a request.

53. Moreover, the Court notes that nor has the Applicant explained exactly how and why the challenged decisions, by which his second request for reopening of the criminal proceedings was rejected, constitute a violation of his rights and individual freedoms guaranteed by the Constitution, neither has he presented any evidence which would justify the allegation of such a violation.

54. In respect to this, the Court emphasizes that it is not its task to deal with errors of fact or law (legality) allegedly committed by the Court of Appeal or by the Office of the State Prosecutor, unless and in so far as they may have infringed upon rights and freedoms protected by the Constitution (constitutionality).

55. The Constitutional Court reiterates that it is not a court of fourth instance in respect of the decisions taken by the regular courts or by other public authorities. 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 vs. Spain,* No. 30544/96, ECHR Judgment of 21 January 1999, paragraph 28; see, also the Constitutional Court in case KI70/11 of Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

56. The Constitutional Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *inter alia,* Report of the

European Commission of Human Rights in the case *Edwards v. United Kingdom,* App.No. 13071/87, adopted on 10 July 1991).

57. The Court considers that the proceedings before the Basic Court and the Court of Appeal as well as the rejection of the Applicant's request for protection of legality by the Office of the Chief State Prosecutor have been fair and reasoned (See case *Shub us. Lithuania,* no. 17064/06, ECHR, Decision of30 June 2009).

58. Therefore, the Court finds that this part of the Referral is to be declared as manifestly ill-founded since the Applicant has not sufficiently substantiated his allegations.

59. In sum, the Court concludes that in accordance with Rules 36 (2) (d) and 36 (3) (d) of the Rules of Procedure the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2) (d) and 36 (3) (d) of the Rules of Procedure, on 10 August 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI152/14 dhe KI153/14, Applicant Fatmir Pajaziti-Constitutional Review of the Judgment, P.m.l. No. 194/2013 of the Supreme Court of Kosovo dated 2 April 2014, Decision, PLK. No. 4/14 of the Panel for Conditional Release dated 28 April 2014 and Judgment, Pzd. No. 84/2014 of the Supreme Court of Kosovo of 5 August 2014

KI152/14 dhe KI153/14, Resolution on Inadmissibility of 10 August 2015, published on 20 August 2015

Keywords: *Individual referral, out of time referral, manifestly ill-founded referral, organized crime, smuggling of migrants, conditional release, extraordinary mitigation of punishment, criminal procedure*

In case KI152/14, the Supreme Court upheld the decision of the lower instance court which found the Applicant guilty. In case KI153/14, the Supreme Court upheld the decision of the Conditional Release Panel which rejected the conditional release of the Applicant, because the legal requirements have not been met.

The Applicant filed complaint with the Constitutional Court, alleging violations of the criminal procedure and intervention with regular judiciary to release him on bail without specifying any constitutional provision in particular. The Constitutional Court, in Case KI152/14, found that the Applicant's Referral was out of time, whereas in case KI153/14, the Constitutional Court considered that the Applicant is not mainly satisfied with the legal qualification of the facts and outcome of the proceedings completed before the Supreme Court and that the legal qualification of facts and applicable law are matters of legality. The Referrals were declared inadmissible in accordance with Articles 48 and 49 of the Law and Rules 36 (1) (c) and 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Cases Nos. KI152/14 and KI153/14
Applicant
Fatmir Pajaziti
Constitutional Review of the Judgment, P.m.l. No. 194/2013 of the Supreme Court of Kosovo dated 2 April 2014, Decision, PLK. No. 4/14 of the Panel for Conditional Release dated 28 April 2014 and Judgment, Pzd. No. 84/2014 of the Supreme Court of Kosovo of 5 August 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Fatmir Pajaziti, with residence in village Smirë, Municipality of Vitia, currently serving his sentence in Dubrava prison.

Challenged Decisions

2. In his Referral, KI152/14, the Applicant challenges the Judgment of the Supreme Court (P.m.l. No. 194/2013dated 2 April 2014), by which the Applicant's request for protection of legality was rejected as ungrounded. The aforementioned Judgment was served on the Applicant on 26 May 2014.

3. In his Referral, KI153/14, the Applicant challenges Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014) by which the Applicant's request for conditional release for the remaining part of his imprisonment sentence was rejected. This Decision was served on the Applicant on 29 April 2014.

4. In the same Referral, KI153/14, he also challenges the Judgment of the Supreme Court (Pzd. No. 84/2014dated 5 August 2014). The Supreme

Court rejected the Applicant's request for extraordinary mitigation of his imprisonment sentence imposed by Judgment of the District Court in Prishtina (P. No. 244/2010 dated 17 June 2011).

Subject Matter

Referral KI152/14

5. The subject matter of this Referral is the request for constitutional review of the Judgment, P.m.l. No. 194/2013of the Supreme Court of Kosovo dated 2 April 2014.

6. In his Referral the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular substantiates his Referral. However, he alleges violation of criminal proceedings completed before the regular courts, where the Applicant was sentenced to imprisonment for committing the criminal offence of Smuggling of migrants.

Referral KI 153/14

7. The subject matter of this Referral is the request for constitutional review of the Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014) and of the Judgment of Supreme Court (Pzd. No. 84/2014dated 5 August 2014) regarding the Applicant's request for extraordinary mitigation of the imprisonment sentence.

8. In this Referral, the Applicant does not specify what rights and freedoms have been violated and what constitutional provision in particular substantiates his Referral.

Legal basis

9. The Referrals are based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 37 and 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

10. On 8 October 2014 the Applicant submitted the Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

11. On 6 November 2014, the President of the Court by Decision, GJR. KI152/14 appointed Judge Ivan Cukalovic as Judge Rapporteur and by Decision, KSH. KI154/14 appointed the Review Panel composed of Judges, Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

12. On 14 November 2014, the Court notified the Applicant of the registration of Referral and requested from him to complete the Referral forms and submit additional documents.

13. On 1 December 2014, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI153/14 with Referral KI152/14. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the Decisions (GJR. KI152/14 and KSH. KI152/14) of the President on the appointment of the Judge Rapporteur and the Review Panel on 6 November 2014.

14. On 1 December 2014 the Court informed the Applicant of the joinder of Referrals. On the same date the Court sent a copy of the Referral and notification of joinder of referrals to the Supreme Court and Kosovo Judicial Council.

15. On 22 December 2014, the Applicant submitted the completed Referral form and the additional documents.

16. On 6 February 2015 the Court requested the Basic Court in Prishtina to provide a copy of the receipt of service, which shows when the Judgment, of the Supreme Court (P.m.l. No. 194/2013dated 2 April 2014), was served on the Applicant.

17. On 2 March 2015, the Basic Court in Prishtina submitted the copy of the receipt to the Court, which shows that the Applicant received the Judgment of the Supreme Court (P.m.l. No. 194/2013dated 2 April 2014) on 26 May 2014.

18. On 3 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referrals as inadmissible.

Summary of facts

A. Summary of facts related to Referral KI 152/14

19. During the night between 14 and 15 October 2009, a group of 18 (eighteen) citizens from Kosovo has crossed the border between Serbia

and Hungary by a boat sailing in river Tisa, near the city of Subotica. The boat was drowned on its way and 15 (fifteen) citizens of Kosovo lost their lives, while 3 (three) of them survived.

20. On 13 September 2010 the Special Prosecution Office of the Republic of Kosovo (hereinafter: SPRK) based on the act PPS. No. 422/09, filed an indictment against the Applicant and six (6) other persons, charging them with the criminal offence of the organized crime under Article 274, paragraph 4, in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: CCK), and the criminal offence of Smuggling of migrants under Article 138, paragraph 6 of the same Code.

21. On 17 June 2011, the District Court in Prishtina (Judgment, P. no. 244/10) found the Applicant guilty for committing the criminal offence of Smuggling of migrants under Article 138, paragraph 6 of the CCK and sentenced him to seven (7) years of imprisonment. In addition, with the same Judgment of the District Court in Prishtina four (4) other persons were found guilty for committing the criminal offence of the organized crime in conjunction with the criminal offence of Smuggling of migrants and two (2) other persons were found guilty for committing the criminal offence of Smuggling of migrants and were consequently sentenced to imprisonment.

22. On 1 November 2011, the Applicant filed an appeal with the Supreme Court against the Judgment of the District Court, alleging substantial violation of the provisions of the criminal code and criminal procedure code and erroneous and incomplete determination of the factual situation.

23. On 2 October 2012, the Supreme Court (Judgment, AP-Kz nr. 61/2012) rejected the Applicant's appeal as ungrounded.

24. On an unspecified date, the Applicant submitted a request for protection of legality with the Supreme Court, challenging the judgments of the District Court in Prishtina (P. no. 244/10 dated 17 June 2011) and that of Supreme Court (AP-Kz nr. 61/2012 dated 2 October 2012), alleging that these judgments contain essential violation of the criminal code and criminal procedure code.

25. On 2 April 2014 the Supreme Court (Judgment, P.m.l. nr. 194/2013) rejected the Applicant's request for protection of legality as ill-founded, and held that it did not found any procedural violation.

26. The Court notes that one of the persons who were found guilty by the aforementioned Judgment of the District Court in Prishtina (P. no.

244/10, of 17 June 2011) filed a Referral with the Court requesting the constitutional review of the same Judgment of the Supreme Court, P.m.l. nr. 194/2013, of 2 April 2014. On 16 January 2015, the Court had decided to declare the Referral as inadmissible by reason of being manifestly ill-founded (See Case KI137/14, Applicant: *Shpejtim Ademaj*, Resolution on Inadmissibility of 16 January 2015).

B. Summary of fact related to Referral KI 153/14

As to the Decision of the Conditional Release Panel

27. On 23 May 2013, the Applicant filed a request with the Conditional Release Panel seeking his conditional release for the remaining part of his imprisonment sentence.

28. On 28 April 2014, the Conditional Release Panel (Decision, PLK. No. 4/14) rejected the Applicant's request with the possibility of reviewing his case after one (1) year.

29. The Conditional Release Panel assessed that due to the nature and weight of the criminal offence and the purpose of the criminal sanction, the conditions for his conditional release have not been met.

As to the Applicants' request for extraordinary mitigation

30. On an unspecified date, the Applicant filed a request with the Supreme Court requesting an extraordinary mitigation of the imprisonment sentence imposed by the Judgment of the District Court in Prishtina (P. No. 244/2010 dated 17 June 2011) and upheld by Judgment of the Supreme Court (AP. No. 61/2012 dated 2 October 2012).

31. In his request, the Applicant invoked that he was a father of four children and his spouse was seriously ill.

32. On 5 August 2014, the Supreme Court (Judgment, PZD. No. 84/2014) rejected the Applicant's request for extraordinary mitigation as ungrounded.

33. The Supreme Court assessed that extraordinary mitigation is not permissible because the new alleged circumstances invoked by the Applicant do not meet the criteria for extraordinary mitigation established by law.

34. In this regard, the Supreme Court reasoned that:

> *"The circumstances mentioned in this request that he is father of 4 children were known and assessed by the courts during the rendering of the decisions on the punishment. Moreover, it should be mentioned that although* [the Applicant] *invokes the circumstance that his spouse is seriously ill, the court did not confirm this by any circumstances, because no evidences that would prove this circumstance had been enclosed to the request.*

Applicant's allegations

A. As to the Referral KI 152/14

35. As mentioned above, the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular substantiates his Referral, but he alleges violation of criminal proceedings completed before the regular courts, where the Applicant was sentenced to seven (7) years of imprisonment for committing the criminal offence of Smuggling of migrants.

B. As to Referral KI 153/14

36. In his Referral, the Applicant challenges the Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014) and the Judgment of Supreme Court (Pzd. No. 84/2014dated 5 August 2014) regarding his request for extraordinary mitigation of the imprisonment sentence.

37. However, the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular substantiates his Referral. He declares that he served five (5) years of his imprisonment sentence and addresses the Court with the request to "*intervene with the aforementioned court instances to approve his requests for conditional release or extraordinary mitigation of his imprisonment statement*."

Admissibility of the Referrals

38. In order to be able to adjudicate the Applicant's Referrals, it is necessary for the Court to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

A. As to Referral KI152/14

39. 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."

40. The Court also takes into account Rule 36 (1), (c) of the Rules of Procedure, which provides:

"(1) The Court may consider a referral if:

[...]

(c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...]"

41. To determine whether the Applicant has submitted the Referral within the provided time limit of four months, the Court refers to the date when the final decision was served on the Applicant and the date on which the Referral was submitted to the Constitutional Court.

42. The challenged Judgment of the Supreme Court (P.m.l. No. 194/2013dated 2 April 2014) was served on the Applicant on 26 May 2014, while he submitted his Referral to the Court on 8 October 2014. Based on this, it follows that the Referral was not filed within the legal time limit provided by Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedure.

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

44. Therefore, the Referral is inadmissible for being out of time.

B. As to Referral KI 153/14

45. The Court recalls that the Applicant in this Referral challenges:

a. Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014); and
b. Judgment of Supreme Court (Pzd. No. 84/2014dated 5 August 2014) regarding his request for extraordinary mitigation of the imprisonment sentence.

46. In this regard, the Court notes that both challenged decisions were rendered in two different sets of proceedings.

47. As to the Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014), the Court notes that this Decision was served on the Applicant on 29 April 2014, while he submitted his Referral on 8 October 2014.

48. Based on the foregoing, the Court concludes that the part of the Referral, whereby the Applicant challenges the Decision of the Panel for Conditional release is out of time because the Referral was not filed within the legal time limit provided by Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedure.

49. As to the Judgment of Supreme Court (Pzd. No. 84/2014dated 5 August 2014) regarding his request for extraordinary mitigation of the imprisonment sentence, 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 **o**f public authority is subject to challenge".*

50. The Court also refers to Rule36 of the Rules of Procedure, which provides:

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

51. Based on the above, the Court observes that the Applicant is not mainly satisfied with the legal qualifications of facts and the outcome of the proceedings completed before the Supreme Court. Legal qualification of facts and applicable law are the matters which fall within the scope of legality.

52. In this respect, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law(legality)allegedly committed by the Supreme Court, including the regular courts, unless and in so far as they may have infringed rights and freedoms guaranteed by the Constitution (constitutionality).

53. Moreover, in relation to the Judgment of the Supreme Court regarding his request for extraordinary mitigation, the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular substantiates his Referral.

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

55. Furthermore, the Court reiterates that it is not its task under the Constitution to substitute the role of the regular courts, in respect of their decisions. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

56. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated his claim.

57. Therefore, the part of Referral KI153/14 regarding the challenged Judgment of the Supreme Court related to the Applicant's request for extraordinary mitigation is manifestly ill-founded.

58. Finally, the Court concludes that Referrals, KI152/14 and KI153/14 are to be declared inadmissible.

59. Referral KI152/14 is inadmissible because out of time.

60. Referral KI153/14:

    A. As to the part concerning the challenged Decision of the Conditional Release Panel is inadmissible because out of time;

B. Whereas the part of the Referral regarding the challenged Judgment of the Supreme Court related to the Applicant's request for extraordinary mitigation is inadmissible by reason of being manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 48 and 49 of the Law and Rules 36 (1), (c) and (2), (d) of the Rules of Procedure on 10 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referrals as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Arta Rama-Hajrizi

KI172/14, Applicant Afrim Gela - Constitutional Review of Judgment, Rev. No. 189/2014 of the Supreme Court of Kosovo, of 8 July 2014

KI172/14, Resolution on Inadmissibility of 10 August 2015, published on 21 August 2015

Keywords: *Individual referral, manifestly ill-founded referral, labor dispute, material and non-material compensation, disability pension*

The Supreme Court rejected the request for revision of the Applicant regarding the employer's obligation for payment of disability pension or reinstatement to work. The Applicant appealed to the Constitutional Court alleging a violation of his rights to work, but without reference to any constitutional provision in particular.

The Constitutional Court found that the Applicant is dissatisfied with the outcome of the judgments of the regular courts, in particular with the Judgment of the Supreme Court and that this is not sufficient for the Applicant to build an allegation on a constitutional violation. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI172/14
Applicant
Afrim Gela
Constitutional Review of the Judgment, Rev. No. 189/2014 of the Supreme Court of Kosovo dated 8 July 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Afrim Gela, with residence in village Druar, Municipality of Vushtrri.

Challenged Decision

2. The Applicant challenges the Judgment, Rev. No. 189/2014 of the Supreme Court of Kosovo of 8 July 2014, which rejected the Applicant's revision as ungrounded and upheld the Judgment of the Appellate Court, AC. No. 4112/2012 of 2 December 2013.

3. The challenged Judgment of the Supreme Court was served on the Applicant on 27 October 2014.

Subject Matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which allegedly violated the Applicant's right to work. The Applicant's claim before the regular courts concerns his requests for reinstatement to his previous working place or compensation with a monthly payment by way of invalidity pension.

Legal basis

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

Proceedings before the Constitutional Court

6. On 27 November 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 8 December 2014 the President of the Court by Decision, GJR. KI172/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI172/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

8. On 18 December 2014 the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court. On the same date, the Court requested the Basic Court in Prishtina to provide a copy of the receipt of service, which shows when the Judgment of the Supreme Court (Rev. No. 189/2014 dated 8 July 2014) was served on the Applicant.

9. On 24 December 2014 the Basic Court in Prishtina submitted the copy of the receipt of service, which shows that the Judgment of the Supreme Court (Rev. No. 189/2014 dated 8 July 2014) was served on the Applicant on 27 October 2014.

10. On 26 June 2015, by Decision of the President of the Court, Arta Rama-Hajrizi was appointed as member to the Review Panel, replacing Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.

11. On 2 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

12. The Applicant had an employment contract with KEK (hereinafter: the Employer) for an indefinite period of time.

13. On 21 April 2004, the Applicant suffered bodily injuries from an accident in his working place.

14. Consequently, on an unspecified date, the Applicant filed a request with the Employer's Pension Fund to grant him the right to a monthly payment by way of invalidity pension.

15. On 27 April 2005, the Employer approved the Applicant's request and decided (Decision No. 67/11) to send the Applicant on early retirement with the agreement of a monthly payment by way of invalidity pension, starting from 1 June 2005 and to terminate on 1 June 2010 (hereinafter: the Employer's Decision). This monthly payment was executed from the Pension Fund of the Employer in accordance with the Statute on Supplementary Pension Fund of the Employer.

16. On 7 July 2010, upon termination of the five (5) years period stipulated in aforementioned Employer's Decision, the Applicant filed a lawsuit with the Municipal Court in Prishtina. The Applicant requested his reinstatement to the previous working place, or compensation with a monthly payment by way of invalidity pension for the same amount as foreseen in the Employer's Decision (No. 67/11, dated 27 April 2005), starting from 1 June 2010 until the date he reaches the legal retirement age.

17. On 24 April 2012, the Municipal Court in Prishtina (Judgment, C. No. 1513/10) rejected the Applicant's claim as ungrounded.

18. In its Judgment, the Municipal Court in Prishtina held that the employment relationship in terms of a contractual relationship, entitles the parties to freely define the rights and obligations deriving from that relationship. Thus, it concluded that the employment relationship and the Applicant's right to the monthly payment had terminated upon expiry of the period stipulated in Employer's Decision (No. 67/11, dated 27 April 2005) and the fulfillment of the financial obligations of the Employer toward the Applicant.

19. Against the Judgment of the Municipal Court in Prishtina, the Applicant filed an appeal with the Appellate Court. In his appeal, the Applicant alleged violation of the contested procedure, incomplete ascertainment of the factual situation and erroneous application of the substantive law.

20. On 2 December 2013, the Appellate Court (Judgment, AC. No. 4112/2012) rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Municipal Court in Prishtina.

21. In its Judgment, the Appellate Court held that the Applicant himself filed a request with the Employer's Pension Fund to grant him the right for a monthly payment by way of invalidity pension for a period of five (years). Thus, according to the Appellate Court, the employment relationship was transformed into a contractual relationship, whereby the Employer was obliged to fulfill the obligation of the monthly payment for a period of five (5) years. Therefore, according to the Appellate Court, the Applicant was no longer entitled to be reinstated in his previous working place because the employment relationship has terminated upon fulfilment of the Employer's obligation toward the Applicant.

22. The Applicant filed a request for revision with the Supreme Court against the Judgment of the Appellate Court. In his request for revision, he alleged essential violations of the contested procedure.

23. On 8 July 2014, the Supreme Court (Judgment, Rev. No. 189/2014) rejected the Applicant's revision as ungrounded.

24. In its Judgment, the Supreme Court confirmed that the Employer fulfilled its obligation toward the Applicant, because it acted in conformity with its Decision, No. 67/11, dated 27 April 2005, which decision the Applicant did not challenge. Furthermore, the Supreme Court referring to the Law on Essential Labour of Kosovo held that the employment contract may be terminated upon a written agreement between the employee and the employer.

25. For the purposes of a full presentation of the regular court proceedings, the Court notes that, in 2005, the Applicant had also initiated a civil proceeding concerning compensation for material and non-material damage for the injuries suffered from the accident. This civil proceeding, which is still pending before the regular courts, does not fall within the scope of the subject matter of the Referral, because the Applicant specifically challenges the completed proceedings concerning his claim for reinstatement to his working place, or compensation with a monthly payment by way of invalidity pension.

Applicant's allegations

26. The Applicant alleges that Judgment of the Supreme Court has violated his right to work.

27. The Applicant requests the Court for the reinstatement to his working place or compensation by way of invalidity due to his work disability.

Admissibility of the Referral

28. 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 all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. The Court takes into account Article 48 of the Law, which provides:

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

30. The Court also refers to Rule36 of the Rules of Procedure, which provides:

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

31. In his Referral, the Applicant alleges that the challenged Judgment of the Supreme Court (Rev. No. 189/2014, of 8 July 2014) violated his right to work.

32. However, he does not explain how and why the Judgment of the Supreme Court has allegedly violated his right to work, nor he has alleged any unfairness and arbitrariness in the proceedings.

33. The Supreme Court in its Judgment held that the Employer had fulfilled its obligation toward the Applicant in accordance with its Decision (No. 67/11, dated 27 April 2005), which decision the Applicant did not challenge.

34. The Court considers that the mere fact that the Applicant is not satisfied with the outcome of the judgments of the regular courts, in particular with the Judgment of the Supreme Court is not sufficient for the Applicant to build an allegation on a constitutional violation (See *mutatis mutandis* case *Mezőtúr-Tiszazugi Vízgazdálkodási Társulat v. Hungary,* No. 5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such violations of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument.

35. In addition, the Supreme Court referring to the Law on Essential Labour of Kosovo held that the employment contract may be terminated upon a written agreement between the employee and the employer and it concluded that the lower court instances had correctly applied the substantive law.

36. 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 regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance when considering the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

37. Furthermore, as mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the completed proceedings before the regular courts have not been unfair or arbitrary (See case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

38. In fact, the Court observes that the Applicant alleges violation of his right to work, which is guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution. However, the Court considers that the challenged Judgment of the Supreme Court does not in any way prevent the Applicant from working or exercising a profession. As such, there is nothing in the Applicant's claim that justifies a conclusion that his constitutional right to work has been violated (See case KI51/14, Applicant: *Radomir Radosavljević*, Resolution on Inadmissibility of 23 January 2015, par. 32).

39. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated his claim.

40. Therefore, the Referral is manifestly ill-founded, and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (2), d), on 10 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI179/14, Applicant Bejtullah Sogojeva - Constitutional Review of Judgment, Rev. No. 396/2012 of the Supreme Court of Kosovo of 11 September 2013

KI179/14, Decision to Reject the Referral of 6 July 2015, published on 21 August 2015

Keywords: *Individual referral, adjudicated case, the right to fair and impartial trial, judicial protection of rights*

In this case, the Constitutional Court has already decided om the Applicant's Referral by declaring it inadmissible as manifestly ill-founded regarding allegations related to a fair trial and judicial protection of rights.

The Court reiterates that it had already adjudicated on the Applicant's case and in the present Referral, the Applicant does not raise any new complaints nor does he present any new facts or evidence and the present Referral is entirely repetitive of the previous Referral. The referral was declared inadmissible in accordance with to Rule 32 (5) of the Rules of Procedure.

DECISION TO REJECT THE REFERRAL
in
Case No. KI179/14
Applicant
Bejtullah Sogojeva
Constitutional Review of the Judgment, Rev. No. 396/2012 of the Supreme Court of Kosovo of 11 September 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Bejtullah Sogojeva, with residence in Prishtina.

Challenged Decision

2. The Applicant challenges the Judgment, Rev. No. 396/2012 of the Supreme Court of Kosovo, of 11 September 2013, which rejected the Applicant's revision as ungrounded and upheld the Judgment of the District Court in Prishtina, AC. No. 1356/2011, of 24 January 2012.

3. The Applicant had submitted a Referral challenging the same decisions, wherein the Court declared the Referral inadmissible by reason of being manifestly ill-founded. (See Case KI05/14, Applicant: *Bejtullah Sogojeva*, Resolution on Inadmissibility of 7 July 2014).

Subject Matter

4. The subject matter of the Referral is the constitutional review of the aforementioned Judgment of the Supreme Court, which allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 (5) and 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 15 December 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 13 January 2015 the President of the Court by Decision, GJR. KI179/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI179/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.

8. On 23 January 2015 the Court informed the Applicant of the registration of the Referral.

9. On 26 June 2015, by Decision of the President of the Court, Arta Rama-Hajrizi was appointed as member to the Review Panel, replacing Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.

10. On 2 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to reject the Referral.

Summary of facts

11. The Court notes that the facts in the present Referral are the same as presented in Case KI05/14.

12. The Applicant was employed at the Medical Institute in Obiliq (hereinafter: the Employer) until 15 August 2006. On that date, his employment relationship with the Employer was terminated because he allegedly reached the full retirement age.

13. According to the Applicant, his working booklet wrongly stated that he was born on 15 March 1941 when in fact he was born on 15 August 1942. Thus, as alleged by the Applicant, the Employer had wrongly

calculated his retirement age and as a consequence he had to retire before he reached the full retirement age.

14. On 15 August 2006, the Applicant initiated civil court proceedings before the Municipal Court in Prishtina.

15. Following that, on 8 December 2008, the Municipal Court issued a Judgment (Cl. No. 161/2007) and approved the Applicant's claim. The Applicant's employer as the respondent in the proceedings was obliged to compensate to the Applicant his annual personal income and the costs of the proceedings.

16. Following an appeal filed by the Employer against the Judgment of Municipal Court in Prishtina, on 15 September 2009, the District Court in Prishtina (Judgment, Ac. No. 569/2009) quashed the aforementioned Judgment of the Municipal Court and remanded the case for retrial.

17. On 22 April 2011, the Municipal Court in Prishtina (Judgment, C. No. 2360/09) rejected the Applicant's claim. The Applicant appealed against that Judgment.

18. On 24 January 2012, the District Court (Judgment, Ac. No. 1356/2011) upheld the Judgment of the Municipal Court in Prishtina.

19. Against the Judgment of the District Court in Prishtina of 24 January 2012, the Applicant submitted a revision to the Supreme Court of Kosovo, alleging that Judgment of the District Court in Prishtina was issued in violation of the Law on the Contested Procedure.

20. On 11 September 2013 the Supreme Court (Judgment, Rev. No. 396/2013) rejected the Applicant's revision as ungrounded. In this Judgment, the Supreme Court concluded that the employment relationship was terminated because the Applicant had reached the retirement age and that the Applicant’s request for correction of his birth date was filed one (1) year after the decision for his retirement.

The procedure before the Constitutional Court in Case KI05/14

21. On 17 January 2014, the Applicant had submitted a Referral to the Court challenging the Judgment of the Supreme Court, Rev. No. 396/2012 dated 11 September 2013. This Referral was registered under number KI05/14.

22. On 7 July 2014, the Court issued Resolution on Inadmissibility, wherein it declared the Referral inadmissible for being manifestly ill-founded.

23. The Resolution on Inadmissibility was published in accordance with Article 20.4 of the Law and served on the Applicant. The receipt of service confirms that the Applicant has received the Court's Resolution of Inadmissibility on 17 July 2014.

Applicant's allegations

24. As alleged in the previous Referral KI05/14, the Applicant maintains that the challenged decision violated his right guaranteed by Article 31 and 54 of the Constitution.

25. In the present Referral, the Applicant does not present any new evidence nor does he raise any new complaints.

26. The Applicant again requests the Court to annul the Judgment, Rev. No. 396/2012 of the Supreme Court of 11 September 2013 and remand the case for retrial.

Assessment of the Referral

27. The Court notes that the present Referral filed by the Applicant is identical to his previous Referral KI05/14.

28. Regarding his previous Referral, KI05/14, the Court recalls that it had rendered a decision (Resolution on Inadmissibility in case KI05/14 of 7 July 2014), wherein it declared the Referral inadmissible for being manifestly ill-founded. The aforementioned Resolution on Inadmissibility was served on the Applicant and published in accordance with Article 20.4 of the Law.

29. As mentioned above, in the present Referral, the Applicant again challenges the Judgment of the Supreme Court, Rev. No. 396/2012 of 11 September 2013, raises the same allegations and presents the same facts and evidence as in his previous Referral, KI05/14.

30. In this regard, the Court refers to Rule 32 (5) of the Rules of Procedure, which provides:

> *"The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is*

repetitive of a previous referral decided by the Court, or if the referral is frivolous".

31. The Court reiterates that it had already adjudicated on case KI05/14 and in the present Referral, the Applicant does not raise any new complaints nor does he present any new facts or evidence. Thus, the present Referral is entirely repetitive of the previous Referral, KI05/14.

32. Therefore, based on Rule 32 (5) of the Rules of Procedure, the Court concludes that the present Referral is to be rejected because it is repetitive of the previous Referral, KI05/14 already decided by this Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 116 of the Constitution and Rule 32 (5) of the Rules of Procedure, on 13 August 2015, unanimously:

DECIDES

I. TO REJECT the Referral;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI57/15, Applicant Rasim Rama - Constitutional review of Judgment, Pml. No. 61/2015 of the Supreme Court of the Republic of Kosovo of 26 March 2015

KI57/15, Resolution on Inadmissibility of 6 August 2015, published on 21 August 2015

Keywords: *Individual referral, manifestly ill-founded referral, interim measure, non-disclosure of identity, the right to fair and impartial trial, right to legal remedies, criminal proceedings, imprisonment sentence, accepting bribes*

The Supreme Court rejected the request for protection of legality submitted by the Applicant against the decisions of the lower instance courts that had sentenced him to imprisonment for accepting bribes. The Applicant filed complaint with the Constitutional Court alleging violation of his rights to fair trial and effective legal remedies. The Applicant also requested the imposition of interim measure.

The Constitutional Court concluded that the Applicant's request raises questions of legality and that the proceedings conducted in regular courts had not been unfair or arbitrary. The Constitutional Court also rejected the requests for interim measure and non-disclosure of identity because, that there was no *prima facie* case, i.e. the requests were not substantiated. The Referral was declared inadmissible in accordance with Articles 27 and 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI57/15
Applicant
Rasim Rama
Constitutional review
of Judgment, Pml. No. 61/2015
of the Supreme Court of the Republic of Kosovo of 26 March 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Rasim Rama (hereinafter: the Applicant), with residence in Mushnikova Village, Municipality of Prizren. The Applicant is represented by Mr. Rexhep Hasani, practicing lawyer from Prizren.

Challenged Decision

2. The challenged decision is Judgment, Pml. No. 61/15 of the Supreme Court of Kosovo of 26 March 2015, whereby the Applicant's request for protection of legality against Judgment, P. No. 341/2013 of the Basic Court in Prizren of 6 June 2014 and Judgment, PAKR. No. 430/2014 of the Court of Appeal of 8 January 2015 was rejected as ungrounded.

3. The Applicant declares that he had been served with the challenged decision on 20 April 2015.

Subject Matter

4. The subject matter is the constitutional review of the abovementioned Judgment of the Supreme Court of Kosovo whereby, according to the Applicant's allegations, his rights guaranteed by Article 31 [Right to

Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

5. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely, to prevent the execution of the sentence against him, who, by Judgment P. No. 341/2013 of the Basic Court in Prizren of 6 June 2014, was sentenced to six (6) months of imprisonment.

6. In addition, the Applicant requests the Court not to disclose his identity.

Legal basis

7. 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 Constitutional Court

8. On 7 May 2015 the Applicant submitted the Referral to the Court.

9. On 13 May 2015 the President, by Decision GJR. KI57/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President, by Decision KSH. KI57/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Enver Hasani and Arta Rama-Hajrizi.

10. On 26 May 2015 the Court notified the Applicant of the registration of the Referral and sent a copy of it to the Supreme Court.

11. On 17 June 2015 the Applicant submitted a document requesting urgent processing of his case.

12. On 1 July 2015 the President, by Decision KSH. KI57/15 appointed Judge Ivan Cukalovic, as a member to the Review Panel replacing Judge Enver Hasani whose mandate as Constitutional Judge ended on 26 June 2015.

13. On 6 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

14. The Applicant is a teacher of Bosnian language at "Gjon Buzuku" Gymnasium in Prizren.

15. On 6 June 2014 the Basic Court in Prizren (Judgment, P. No. 341/13) deciding on the Indictment, PP. No. 173/13 of the State Prosecutor in Prizren of 30 September 2013 found the Applicant guilty of the criminal offence of accepting bribes as foreseen in Article 428, paragraph 1, of the Criminal Code of Kosovo (hereinafter: the CCK).

16. On an unspecified date, the Basic Prosecution in Prizren, Department for Serious Crimes, filed an appeal with the Court of Appeal in relation to the decision on the sentence. In addition, the Applicant had filed an appeal against the abovementioned Judgment of the Basic Court in Prizren alleging erroneous and incomplete determination of the factual situation. In his appeal, the Applicant had also requested that some other witnesses be summoned who he considered to be relevant to the case.

17. On 8 January 2015 the Court of Appeal by Judgment, PAKR. No. 430/14 rejected as ungrounded both the appeal of the Basic Prosecution in Prizren and the Applicant's appeal and upheld Judgment, P. No. 341/13 of the Basic Court in Prizren, of 6 June 2014.

18. As regards the Applicant's request that other witnesses be summoned, the Court of Appeal, in its Judgment, considered that the first instance court had reasoned its decision for not granting the Applicant's proposal to obtain the statements of other witnesses with the reasoning that their statements were irrelevant to the present case.

19. Furthermore, the Court of Appeal held that: "*the enacting clause of the Judgment is clear and intelligible; the enacting clause is contradictory neither to itself nor to the factual description of the enacting clause of the Judgment [...]*". Regarding the Prosecutor's appeal, the Court of Appeal confirmed the mitigating and aggravating circumstances, which the Basic Court in Prizren had considered as basis, when deciding on the punishment.

20. On an unspecified date, the Applicant had filed a request with the Basic Court in Prizren to postpone the execution of the sentence, reasoning that he was a teacher and the serving of the sentence had to be postponed until the end of the school year.

21. On 16 March 2015, the Basic Court in Prizren by Decision, PED. No. 168/15 partially granted the Applicant's request, postponing the

serving of the sentence for another three (3) months, namely, until 31 June 2015.

22. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo.

23. On 26 March 2015 the Supreme Court of Kosovo rendered Judgment, Pml. No. 61/2015 rejecting the Applicant's request for protection of legality, filed against Judgment, P. No. 431/2013 of the Basic Court in Prizren, of 6 June 2014, and Judgment PAKR. No. 430/2014 of the Court of Appeal of 8 January 2015.

24. In this regard, the Supreme Court confirmed that the lower instance courts had based their decisions on the evidence administered by the courts.

Applicant's allegations

25. In his Referral the Applicant alleges that by Judgment, Pml. No. 61/2015 of the Supreme Court of 26 March 2015 his rights guaranteed by the Constitution, namely, Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 54 [Judicial Protection of Rights] were violated.

26. The Applicant concludes by requesting that:

> *"The Constitutional Court of the Republic of Kosovo ANNUL all Judgments attached to this Referral with the sole purpose of granting him the constitutional right provided by Article 31, paragraph 4 of the Constitution of the Republic of Kosovo and Article 384, paragraph 2.2.2 of the CPC on the right of ATTENDANCE OF WITNESSES, which he considers mandatory and which can explain the decisive facts [...]"*

Admissibility of the Referral

27. The Court notes that, in order to be able to adjudicate the Applicant's referral, it needs 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.

28. In this regard, the Court refers to Article 113, paragraph 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."

29. In the present case the Court notes that the Applicant has exhausted all legal remedies available. The Court also notes that the challenged decision was rendered on 26 March 2015 and that the Applicant filed his request with the Court on 7 May 2015.

30. However, the Court also refers to Article 48 of the Law, which foresees:

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

31. The Court also refers to Rule 36 of the Rules of Procedure, which foresees:

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

[...]

(d) the referral is prima facie justified or 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.

[...]

(d) when the Applicant does not sufficiently substantiate his claim".

32. In his Referral, the Applicant alleges that Judgment, Pml. No. 61/2015 of the Supreme Court of Kosovo of 26 March 2015, Judgment PAKR. No. 430/14 of the Court of Appeal, and Judgment P. No. 341/ 14 of the Basic Court in Prizren of 6 June 2014 were rendered by violating Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights], and Article 113 [Jurisdiction and Authorized Parties] of the Constitution.

33. The Court notes that the regular courts have reasoned their decisions by referring to the provisions of the applicable law. In this regard, the Court finds that the issues that the Applicant raises are a matter of legality and not constitutionality.

34. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of law (legality) allegedly committed by the Supreme Court, unless and in so far as they might have infringed rights and freedoms protected by the Constitution (constitutionality).

35. The Constitutional Court cannot replace the role of the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of the procedural and substantive law (See case *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Decision of 21 January 1999; see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima, and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the case does not mean that he can file an admissible referral alleging a violation of the rights guaranteed by the Constitution. The Court notes that the Applicant was given many opportunities to present his case in the regular courts.

36. Furthermore, as mentioned above, the Court notes that the reasoning given in Judgment, Pml. No. 61/2015 of the Supreme Court of 26 March 2015 is clear and, upon reviewing all the procedures, the Court finds that the procedures conducted before the regular courts were not unfair or arbitrary (see case *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).

37. Hence, as to the Applicant's claim that the regular courts by rejecting his request to summon witnesses he considered as relevant to his case had allegedly violated his constitutional rights, the Court notes that this issue was addressed and reasoned in substance by the Judgment of the Court of Appeal.

38. Based on the foregoing, the Court considers that the facts represented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant and he has not sufficiently substantiated his claim.

39. Thus, the Court concludes that the Referral is manifestly ill-founded.

Review of the Request for Interim Measure

40. As stated above, the Applicant also requests the Court to render "*a decision on the imposition of an interim measure against the Basic Court in Prizren, whereby the commencement of execution of the sentence against the Convicted Rasim Rama will be suspended [...]*".

41. In order for the Court to decide on an interim measure, pursuant to Rule 55 (4) and (5) of the Rules of Procedure, it is necessary that:

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

42. As concluded above, the Applicant's Referral is inadmissible and, due to this reason, there is no *prima facie* case for imposing an interim measure. Therefore, the request for interim measure is to be rejected as ungrounded.

Request for non-disclosure of identity

43. As to the Applicant's request for not having his identity disclosed, the Court rejects his request as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity disclosed.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 27 and 48 of the Law and Rules 36 (2), b) and d), 55 (4) and (5) and 56 (2) of the Rules of Procedure, on 6 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO REJECT the Applicant's Request to not disclose his identity;

IV. TO NOTIFY this Decision to the Parties;

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

VI. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI187/14, Applicant Met Gashi - Constitutional review of Judgment, Pml. no. 192/2014, of the Supreme Court, of 20 October 2014

KI187/14, Resolution on Inadmissibility of 13 August 2015, published on 4 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, hearing of witnesses, imprisonment sentence, criminal offence*

The Supreme Court rejected as ungrounded the request for protection of legality filed by the Applicant against the decisions of the lower instance courts that punished the Applicant with imprisonment sentence. The Applicant filed appeal with the Constitutional Court alleging unfair trial because the regular courts rejected to hear two witnesses proposed by him.

The Constitutional Court noted that it is up to the discretion of the regular courts to decide whether to hear the witnesses proposed by the Applicant, especially in cases where they consider that their evidence unlikely assist in ascertaining the truth. The Constitutional Court found that the proceedings conducted before the regular courts had not been unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI187/14
Applicant
Met Gashi
Constitutional review of the Judgment, Pml. no. 192/2014, of the Supreme Court, dated 20 October 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and,
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Met Gashi (hereinafter: the Applicant), from Prizren, represented by Mr. Rexhep Kabashi, a practicing lawyer from Prizren.

Challenged decision

2. The challenged decision is the Judgment,Pml. no. 192/2014, of the Supreme Court of 20 October 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, by which Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 (Right to fair trial) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the "ECHR") were allegedly violated, because the regular courts restricted his rights to present evidence and to hear witnesses.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 31 December 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 13 January 2015 the President of the Court, by Decision No.GJR. KI187/14 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No.KSH. KI187/14 appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 20 January 2015 the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 25 June 2015 the Applicant submitted additional documents.

9. On 2 July 2015 the Review Panel endorsed the Report of the Judge Rapporteur and unanimously recommended to the Court the Referral to be declared inadmissible.

10. On 3 August 2015 the Resolution on Inadmissibility was distributed to the Judges of the Court.

Summary of facts

11. On 18 March 2014 the Basic Court in Prizren-General Department (Judgment P. no. 430/12) found the Applicant guilty of having committed a criminal offence under the Criminal Code of the Republic of Kosovo and sentenced him to imprisonment. In the minutes of the main trial, it is noted that the Applicant proposed to hear two witnesses for the purpose of confirming the relationship between the Applicant and the damaged party, why they had met and what had been concluded in that meeting. The first instance court rejected the Applicant's proposal because the proposed witnesses were not present

during the meeting and cannot objectively know the circumstances by which the Applicant acted in report with the damaged party.

12. The Applicant filed an appeal with the Court of Appeals against the Judgment of the Basic Court because of essential violations of criminal procedure provisions, erroneous and incomplete ascertainment of the factual situation, and a violation of criminal law and the imposed sanction.

13. On 22 July 2014 the Court of Appeals (Judgment PAI. no. 709/2014) rejected the appeal as unfounded and upheld the Judgment of the Basic Court. The Court of Appeals held that the Judgment of the first instance court does not contain the alleged violations and that the judgment is clear and reasoned, containing the decisive facts that characterize the criminal offence.

14. The Applicant filed a request for protection of legality with the Supreme Court against the Judgment of the Basic Court and the Judgment of the Court of Appeals, because of essential violations of the criminal procedure provisions and of the criminal law. The Applicant, for the first time, claimed that the first instance court had refused to hear two proposed witnesses by the Applicant and the proposal of the Applicant to extract the communication messages between the Applicant and the injured party.

15. On 20 October 2014 the Supreme Court (Judgment Pml. no. 192/2014) rejected as ungrounded the request for protection of legality filed by the Applicant. The Supreme Court held that from the minutes of the main trial it is noted that the first instance court had provided well-founded reasons for rejecting the proposal of the Applicant to hear two witnesses and to extract the communication messages *"[...] because of the fact that by the case files, it has been confirmed that the witness [...] was the person who introduced the convict to the injured and that in his office was discussed on development of the livestock, distribution of meat in the factory and on the development project which was in possession of the convict, and he had such projects but he did not see them in person. Also, by the statement of the witness [...], was ascertained the fact that purpose of the meeting of the convict with the injured party allegedly was related to an European Union program on development of agriculture, respectively the livestock and that following this meeting, which was also confirmed by the witness [...], came to an agreement whereby the convict and the witness [...] would ensure the livestock farmers who would have increased production of animals to process the meat at the factory built by the International Community on the Ereniku's land, however through the convicted. Furthermore, by the receipt*

which are part of the case files, it has been confirmed the bank transfers from 12 March 2007 until the end of December 2008 whereby were transferred the amounts [...] by the injured party to the convict which were never paid back. Furthermore, by the case files has been verified that observing that projects which have been discussed, have no signs to be implemented, the injured party concluded with the convicted party a "debt" pay back agreement. Based on all these verified facts by the first instance court and by the second instance court, derives that allegations from the request of the convict and his defense counsel, are ungrounded."

Applicant's allegations

16. The Applicant alleges that Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to fair trial) of the ECHR were violated, because:

    a. the first instance court had rejected the Applicant's proposal to hear two witnesses and to extract the communication messages; and

    b. the first instance court had restricted the Applicant's right to question the witnesses.

Admissibility of the Referral

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

18. 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".

19. In addition, Rules36 (1) (d) and 36 (2) of the Rules of Procedure, provide:

    The Court may consider a referral if:

    [...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare 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;

20. The Court notes that in the present case the Applicant complains that the regular courts had rejected his proposals to hear two witnesses, to extract the communication messages between the Applicant and the injured party and that the first instance court had restricted his right to question the witnesses.

21. In this respect, the Court notes that as a general rule it is for the regular courts to assess the evidence before them as well as the relevance of the evidence which the accused seeks to adduce (see Case of *Laska and Lika v. Albania*, Applications nos. 12315/04 and 17605/04, Judgment of 20 April 2010). With regards to the calling and examination of witnesses, it does not give an accused person an unlimited right to obtain the attendance of witnesses in court and the accused must provide reasons for the calling and examination of witnesses. The regular courts are free to refuse to call witnesses proposed by the defence, for instance, on the ground that the court considers their evidence unlikely to assist in ascertaining the truth (see Case of *Huseyn and Others v. Azerbaijan*, Applications nos. 35485/05, 45553/05, 35680/05 and 36085/05, Judgment of 26 July 2011).

22. The Court reiterates that it is not to act as a court of fourth instance, with respect to the decision rendered by the Supreme Court. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. 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 of *Khan v. the United Kingdom*, Application no. 35394/97, Judgment of 12 May 2000).

23. In this respect, the Court notes that the Applicant made a request before the Basic Court to hear two witnesses and to extract the communication messages. This was rejected by the Basic Court for the abovementioned reasons.

24. The Applicant then raised, for the first time, before the Supreme Court and not before the Appeals Court the claim that the first instance court had refused to hear two proposed witnesses by the Applicant and the proposal of the Applicant to extract the communication messages between the Applicant and the injured party. The Supreme Court gave reasons to the Applicant's allegations in its judgment by stating that the first instance court had reasoned the rejection of the proposal of the Applicant.

25. Moreover, the Supreme Court noted that the Applicant has had ample opportunity to defend himself throughout the regular court proceedings.

26. In the present case, the Court does not find that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary. Moreover, the Court finds that the Applicant has not clearly shown how any of the witnesses whom the Basic Court refused to examine would have been able to assist the Applicants' defence against the specific accusations put forward against him. It is the duty of the Applicant to attach the necessary documents to his Referral and not the duty of the Court to build the case, or to request documents *ex officio*, which would eventually be in his favor.

27. The Court concludes that the Applicant's referral is manifestly ill-founded pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure and Rule 56 (b) of the Rules of Procedure, on 13 August 2015, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO NOTIFY this Decision to the Applicant;

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	Arta Rama-Hajrizi

KI167/14, Applicant NTP Unio Commerce, Zelqif Berisha, owner - Constitutional review of Judgment AC-I-13-0045-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 26 June 2014

KI167/14, Resolution on Inadmissibility of 28 August 2015, published on 8 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, equality before the law, the right to fair and impartial trial, protection of property, the Special Chamber of the Supreme Court, an unauthorized person, the privatization process.*

The Special Chamber of the Supreme Court rejected as ungrounded the appeal of the Applicant, regarding the decision of the Privatization Agency of Kosovo to exercise a share call option on the shares in New Co Grand Hotel LLC, which were purchased by the Applicant. The Applicant filed a complaint with the Constitutional Court alleging violation of the equality before the law, fair and impartial trial, and protection of property.

As to the compatibility of laws with the Constitution, the Court found that the Applicant is an unauthorized party to such constitutional issues. Regarding the alleged violation of the right to property and the right to fair and impartial trial, the Court concluded that the Applicant has not substantiated its allegations of violations of its rights to equality before the law, to protection of property and to a fair and impartial trial. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure

RESOLUTION ON INADMISSIBILITY
in
Case No. KI167/14
Applicant
NTP Unio Commerce,
Zelqif Berisha, owner
Constitutional review of the Judgment AC-I-13-0045-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 26 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is NTP Unio Commerce, with its seat in the Municipality of Hani i Elezit, Mr. Zelqif Berisha being the owner. The Applicant is represented by Mr. Alexander Borg Olivier, a lawyer practicing in Prishtina.

Challenged decision

2. The Applicant challenges the Judgment AC-I-13-0045-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), of 26 June 2014, which upheld the Judgment C-I-12-0042, of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel of the SCSC), of 20 March 2013.

3. The challenged Judgment was served on the Applicant on 14 July 2014.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decision which allegedly violated the rights of the Applicant, as 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] in conjunction with Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as his rights guaranteed by Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter: ECHR), and by Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.

Legal basis

5. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 29 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 14 November 2014, the Applicant submitted the Referral to the Court.

7. On 24 November 2014, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 26 November 2014, the Court notified the Applicant of the registration of Referral and sent a copy of the Referral to the SCSC and to the Privatization Agency of Kosovo (hereinafter: the PAK).

9. On 8 December 2014, the Court decided to reject the Request for Interim Measures (See Decision on Interim Measures KI167/14, published on 17 December 2014).

10. On 9 December 2014, the Court sent a copy of this Referral for information to the Applicants in case KI168/14, where Judgment of the Appellate Panel of the SCSC, AC-I-13-0045-A0001, of 26 June 2014 is challenged.

11. On 2 February 2015, the Applicant submitted a copy of the urgent request it had submitted to the SCSC requesting it *"[...] to order immediately a suspension of all actions in the Liquidation procedure*

until the Constitutional Court of Kosovo issues its judgment in the case concerning "New Co Grand Hotel Prishtina."

12. On 26 June 2015, by Decision of the President of the Court, Ivan Čukalović was appointed as Judge Rapporteur, replacing Kadri Kryeziu, whose mandate as Constitutional Court Judge ended on 26 June 2015.

13. On 26 June 2015, by Decision of the President of the Court, Arta Rama-Hajrizi was appointed as member to the Review Panel, replacing Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.

14. On 6 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

15. In 2005, the Kosovo Trust Agency (hereinafter: KTA) initiated a "Special Spin Off" for the sale, through privatization, of the facilities of the Grand Hotel in Prishtina.

16. Following the completion of the bidding process, background checks and litigation at the Special Chamber, the KTA announced the Applicant as the winning bidder.

17. On 10 August 2006, the KTA concluded a contract with the Applicant to sell him the entire share capital of the New Co Grand Hotel LLC (hereinafter: the Grand Hotel). Consequently, the shares were registered in the Ministry of Trade and Industry in the name of the enterprise NTP Unio Commerce.

18. The contract signed between the KTA and the Applicant obligated the Applicant to meet certain requirements as specified in the Commitment Agreement. These requirements included the obligation to make certain financial investments in the building of the Grand Hotel and to maintain and engage a certain number of employees within a certain time frame. A failure to meet these obligations could result in the withdrawal of the shares from the Applicant.

19. On 31 May 2012, the Board of Directors of PAK, the legal successor of the KTA, found that the Applicant did not act in full compliance with the employment and investment commitments that were defined in the Commitment Agreement. Thus, PAK unanimously decided to

exercise the Share Call Option and, as such, withdrew all the shares in New Co Grand Hotel LLC that were purchased by the Applicant.

20. As a result of this Decision of the PAK Board of Directors, the shares and the facilities of the Grand Hotel Prishtina passed to the administration of PAK.

21. On 8 June 2012, the Applicant filed a claim with the Specialized Panel of the SCSC. The Applicant also filed a request for interim measures, asking the Specialized Panel of the SCSC to restrain the PAK from alienating the shares of the Grand Hotel to any third parties until the final decision on the merits of his claim.

22. In his claim, the Applicant challenged the validity of the Decision of the PAK Board of Directors dated 31 May 2012 to exercise a Share Call Option on the shares of the Grand Hotel. In this regard, the Applicant held that *"pursuant to Article 6.2 of the Commitment Agreement the Share Call option shall only be exercised upon written instruction of the Exercising Authority and that pursuant to Article 1 of the Commitment Agreement, concerning the definition "Exercising Authority", in the event that the Special Representative of the Secretary General [of the United Nations] (SRSG) no longer exits, he shall be replaced by an arbitral tribunal formed in accordance with procedures set out at 9.3.2 (b) of the Agreement."*

23. On 29 June 2012 the Specialized Panel of the SCSC (Decision C-I-12-0042) rejected the request for interim measures, reasoning that for the case in question there was no indication that any immediate and irreparable damage would be caused and which could not be reasonably compensated by means of financial compensation.

24. As a result of the Applicant's appeal against the rejection of interim measures, on 27 September 2012, the Appellate Panel of the SCSC (Decision, AC-I-12-0042), approved the Applicant's appeal as partly grounded and decided *"to restrain the KPA from alienating the shares of the NewCo Grand Hotel to any third parties until the final decision regarding the merits of the claim."*

25. On 20 March 2013, the Specialized Panel of the SCSC (Judgment, C-I-12-0042 of 20 March 2013) rejected the Applicant's claim as ungrounded, reasoning that the Applicant's violations of the Commitment Agreement were egregious and that the PAK Decision to exercise the withdrawal of the shares of the Grand Hotel was valid.

26. The Specialized Panel of the SCSC further held that PAK by virtue of Law No. 04/L-034 on the Privatization Agency of Kosovo (hereinafter:

the PAK Law) rightfully reversed the sale by exercising the Share Call Option and that the PAK Law replacing the Kosovo Trust Agency by PAK is valid Kosovo Law.

27. The Applicant filed an appeal with the Appellate Panel of the SCSC, due to substantial violations of procedure, incorrect determination of the facts and erroneous interpretation of the substantive law.

28. Specifically, the Applicant stated that *"[...] pursuant to 6.2 of the Commitment Agreement the share call option shall only be exercised upon written instructions of the Exercising Authority and that pursuant to article 1 of the Commitment Agreement, concerning the definition "Exercising Authority" in the event that the SRSG no longer exists, he shall be replaced by an arbitral tribunal formed in accordance with procedures set out at 9.3.2 (b) of the Agreement. The Claimant stated that the contract clearly refers to the independent and unbiased tribunal, which would decide whether the parties fulfilled their contracting obligations. The Claimant further stated that the PAK as the legal successor of the KTA is only entitled to request of the "Exercising Authority" the permit to exercise the share call option and not to withdraw from the sale by a unilateral decision. The same will be foreseen also in the "letter on authorization of transfer of shares ownership", signed by the Claimant."*

29. On 26 June 2014, the Appellate Panel of the SCSC rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Specialized Panel of the SCSC (C-I-12-0042 of 20 March 2013).

30. In its Judgment, the Appellate Panel of the SCSC held that all arguments presented in the appeal were well considered by the Specialized Panel, and it correctly rejected the Applicant's claim.

31. Regarding the Applicant's claim "*in the event that the SRSG no longer exists, he shall be replaced by an arbitral tribunal formed in accordance with procedures set out at 9.3.2 (b) of the Agreement",* the Appellate Panel held as following:

> *"The Board of Directors of the Respondent could validly issue the Share Call. It needed no prior written instruction by the SRSG as prescribed in Article 6.2 Commitment Agreement and it needed no prior Arbitration. Both requirements have been abolished by Art. 31 .4 of the PAK Law. The power of the SRSG was transferred by law on the Board of Directors of the Respondent. It is true that by Art.31.4 PAK law the contractual duties and rights of the parties of the Commitment Agreement are changed. The Claimant loses the chance that the SRSG refrains from instructing a Share Call and*

he also loses the right to enter arbitration in case the SRSG does not exist anymore or -as it rather turned out -the executive capacities he had at the time this agreement was signed do not exist any longer. "

32. Consequently, the Appellate Panel of the SCSC concluded as following:

"[...] the Appellate Panel considers that the Claimant has not substantially fulfilled the requirements determined by the Commitment Agreement and the lack of their fulfilment clearly presents an egregious breach of contractual obligations of the Agreement (which is precondition to the rejecting decision), and there was no substantiated objection to this, either by the Claimant himself. From the case file, the Appellate Panel found that there were some submissions by the Respondent sent to the Claimant warning him about exceeding of timeliness for fulfilling the obligations, there were even penalties for such omissions, nevertheless, the Claimant was not able to fulfil the commitments given by the Agreement."

Applicant's allegations

33. The Applicant alleges that the Judgment of the Appellate Panel of the SCSC (AC-I-13-0045-A0001 of 26 June 2014), upholding the Judgment of the Specialized Panel of the SCSC (C-I-12- 0042 of 20 March 2013), violated the 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] in conjunction with Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution, as well as his rights guaranteed by Article 6 [Right to a Fair Trial] of the ECHR, and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.

34. In this regard, the Applicant's allegations are to be divided as follows:

- Allegations regarding violation of the principle of equality;
- Allegations regarding violation of the protection of property; and
- Allegations regarding violation of the right to a fair trial.

Allegations regarding violation of the principle of equality

35. The Applicant alleges a violation of Article 3 [Equality before the Law] of the Constitution.

36. In this respect, the Applicant argues that the principle of equality was violated because of unequal treatment of the Applicant in the proceedings before the SCSC, adjudication by the SCSC beyond the scope of the Applicant's claim, and the application of the PAK Law by the SCSC.

37. Firstly, the Applicant claims that the SCSC allowed PAK as a respondent in the proceedings to present evidence and arguments in order to justify its Decision to withdraw the Applicant's ownership over Grand Hotel. The Applicant considers that, in so doing, the SCSC harmed the position of the Applicant and as such it was allegedly put in a disadvantageous position. Thus, the Applicant concludes that the SCSC violated the Applicant's rights guaranteed by Article 3 of the Constitution.

38. Secondly, the Applicant claims that the SCSC exceeded the scope of the Applicant's claim and responded on the allegations of PAK as respondent by concluding that the Applicant committed an egregious violation of the commitments. The Applicant further claims that the SCSC adjudicated the case without giving the Applicant an equal opportunity to address the facts and the allegations made by PAK. Thus, the Applicant concludes that the SCSC violated the equality principle.

39. Thirdly, the Applicant claims that through the medium of Law PAK transformed itself from a party to the contract to and Exercising Authority which authorized the withdrawal of ownership over the Grand Hotel. The Applicant admits that the substitution of the Special Representative of the Secretary General (hereinafter: the SRSG) with the Board of Directors of PAK is in line with the principles of Rule of Law enshrined in the Constitution. However, the Applicant claims that if this *"[...] substitution is applied to the PAK contracts, and is applied retroactively in a way that grants one contracting party unilateral power to void an essential element of the contract, then it would violate the Constitution."*

Allegations regarding violation of the protection of property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR

40. The Applicant extensively quotes the case law of the European Court of Human Rights (hereinafter: the ECtHR) and argues that the challenged Judgment constitutes a violation of the *"[...] the protection afforded to the applicant by Article 1 Protocol 1 and Article 46 of the Constitution [...]"*.

41. In this regard, the Applicant argues that the PAK acting as an agency of the Government *" [...] unlawfully and without due process took ownership and possession of this property from the private owner with only a nominal compensation and without any judicial proceeding."*

Allegations regarding violation of Article 31 of the Constitution and Article 6 of the ECHR

42. The Applicant claims that the unequal treatment by SCSC, the adjudication beyond the scope of the Applicant's claim, the application and interpretation of the PAK Law and the unlawful interference with the possessions of the Applicant *"[...] have also breached, in different specific ways, his fundamental rights as provided under the provisions of Article 6 of the ECHR and Article 31 of the Kosovo Constitution."*

43. The Applicant claims that unequal treatment relates to the unfair treatment during the proceedings before the SCSC, and as such *"inequality of arms in itself creates a breach of Article 6 of the ECHR as it creates a prejudice against one of the parties, in this case, the applicant."*

44. The Applicant argues that the SCSC had a legal obligation to allow the parties in the proceedings equal opportunities to produce evidence and to plead their case. Therefore, according to the Applicant, he was not given a fair and impartial hearing and an opportunity to plead his case.

45. The Applicant explains that his specific claim on adjudication by the SCSC beyond the Applicant's claim was the following: *"Zelqif Berisha trading as NTP "Unio Commerce" (Buyer) Challenges the Decision of Privatization Agency of Kosovo (PAK) Board of Directors dated 31 May 2012 to "exercise a Share Call Option" on the stock shares of NewCo Grand Hotel LL.C. Claimant seeks a judgment from the Special Chamber adjudicating that the Decision of the Board is unlawful as* ultra vires*".*

46. The Applicant considers that the scope of his claim was limited and that the SCSC was requested to answer a procedural question of fundamental importance. Consequently, the Applicant argues that there was a violation of its right guaranteed under Article 6 of the ECHR, because the SCSC *"[...] addressed the presented question only casually, and went beyond the question before it to approve the action of PAK as though PAK were the Exercising Authority."*

47. The Applicant further argues that the Board of Directors of PAK, while assuming the role of the Exercising Authority based on the new PAK Law, unilaterally changed the parameters of the agreement by withdrawing his ownership over the Grand Hotel.

48. In this regard, the Applicant alleges that principles of fairness and impartiality guaranteed by Article 31 of the Constitution and Article 6 of the ECHR were violated, because the *"action of the Trial Panel has deprived the Claimant of the contractual right to have an independent agent to assess the facts objectively and impartially and then decide on the expropriation (Share Call Option) before the government agency (PAK) acts."*

49. In addition, the Applicant argues that the violation of Article 1 of Protocol No. 1 to the ECHR implicitly causes a violation of Article 31 of the Constitution and Article 6 of the ECHR, because he *"[...] had never had the facts complained of, fact relative to his property, being forcibly, unilaterally and illegally investigated judicially."*

50. Finally, the Applicant concludes by requesting the Court to annul the Judgments of the Specialized Chamber of the SCSC (C-I-12-0042 dated 20 March 2013) and that of the Appellate Panel of the SCSC (AC-I-13-0045-A0001 dated 26 June 2014).

Relevant provision of Law No.04/L-034 on the Privatization Agency of Kosovo

Article 31 [Applicable Law]

1. The present Law shall prevail over any provisions of the Law of Kosovo that are inconsistent herewith. Without prejudice to the general application of the foregoing sentence, it is specifically provided that the Law on Administrative Procedures shall not be applicable:

1.1. to any action taken by the Agency under the authority of the present Law with respect to the privatization, liquidation, sale, transfer, restructuring, reorganization or other disposition of any Enterprise, Corporation or Asset, and

1.2. the handling and determination by the Agency or a Liquidation Authority of any claim or interest made or asserted by any person as a purported Creditor or Owner.

2. This Law repeals Law No. 03/L-067, "on the Privatization Agency of Kosovo"

3. The Agency takes over all assets and liabilities that its predecessor may have held, acquired or incurred under UNMIK Regulation 2002/12. The Board and management of the Agency shall fulfil all responsibilities of any predecessor Board or management appointed under UNMIK Regulation 2002/12.

4. Without prejudice to the generality of the foregoing paragraph or paragraph 2 of Article 3 of the present Law, it is specifically provided that the Agency is the Lawful and exclusive successor to any and all rights and obligations of the KTA specified in or arising in connection with a contract previously executed by the KTA and one or more third parties having as its principal subject matter the management, operation, sale, transfer, liquidation or other disposition of an Enterprise, a Corporation, an Asset, or any interest in any of these. Any references in such a contract to the KTA shall be conclusively interpreted to mean the Agency. Any reference in such a contract to the Special Representative of the Secretary General shall be conclusively interpreted to mean the Board of the Agency. If the contract contains one or more provisions specifying that the contract is to be governed by the Law of a foreign jurisdiction:

4.1. neither that provision nor the Law of the specified jurisdiction shall be used, interpreted or applied in any manner that avoids or diminishes the foregoing requirements of this paragraph , and

4.2. this paragraph shall not be interpreted as validating or invalidating, in whole or in part, in any manner, the choice of Law specified in such provision; such validity or invalidity shall be determined in accordance with the applicable rules of international private Law.

5The Directors of the Board appointed by the ICR pursuant to Article 12, paragraph 3, shall remain in their positions after the conclusion of the ICR's mandate and shall be compensated from PAK dedicated revenue unless otherwise decided by the ICR prior to the completion of his mandate.

Admissibility of the Referral

51. First of all, the Court examines whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

52. The Court takes into account Article 48 of the Law, which provides:

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

53. The Court also refers to Rule36 (1) and (2) of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
>
> *(d) the referral is prima facie justified not manifestly ill-founded.*
>
> *(2) The Court shall declare 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".*

54. The Court recalls that the Applicant alleges that the Judgment of the Appellate Panel of the SCSC (AC-I-13-0045-A0001 of 26 June 2014), upholding the Judgment of the Specialized Panel of the SCSC (C-I-12-0042 of 20 March 2013) violated the principle of equality, right to property and his right to fair and impartial trial.

Allegations regarding violation of the principle of equality

55. The Applicant claims that the challenged Judgments of the SCSC violated the principle of equality, as guaranteed by Article 3 of the Constitution.

56. In this regard, the Applicant alleges that it was treated unequally, the SCSC adjudicated beyond the scope of the Applicant's claim and the SCSC unduly applied the PAK Law..

57. Firstly, the Applicant alleges that it was treated unequally by SCSC in the proceedings, because the SCSC allowed PAK, as a respondent in the proceedings, to present evidence and arguments in order to justify its own Decision on withdrawing the Applicant's ownership over Grand Hotel. Thus, according to the Applicant PAK harmed its position and, as such, it was put in a disadvantageous position.

58. The Court notes that the Appellate Panel of the SCSC in its Judgment held that:

> *"The change of law does not mean that the Respondent being a party in the Commitment Agreement and being foreseen as a party in a possible arbitration changes into the position of a judge in its own case. The Respondent remains a party also in exerting its right to a new Share Call. It remains exposed to the Special Chambers independent judicial appraisal whether it has acted legally or not in doing so."*

59. Secondly, the Applicant alleges that the SCSC exceeded the scope of the Applicant's claim, because, while considering the allegations of PAK as respondent, the SCSC concluded that the Applicant committed an egregious violation of the commitments.

60. In this regard, the Court notes that the Appellate Panel of the SCSC reasoned its Judgment as it follows:

> *"Based on what was stated in the appeal, the Appellate Panel does not find any argument that the court exceeded the limitations given by the claim, because it only decided in one point of the enacting clause -"The claim is rejected as ungrounded", and nothing more. The Appellant had a claim in the Special Chamber, therefore it was decided in compliance with that claim. With regard to the assessment of the Specialized Panel "the court evaluates the Claimant's violations are egregious', the Appellate Panel assesses that the Trial Panel did not exceed its limits and did not exacerbate the Claimant because it had to evaluate whether the Claimant has given reason to PAK to issue the share call to be able to adjudicate the full request of the Claimant to declare the share call as invalid. After the Trial Panel came to the correct conclusion that it was within the power of PAK to issue a share call without consulting the SRSG or an arbiter tribunal it had to decide whether the performance of the Claimant necessitated the*

share call. Otherwise it would not have been able to decide whether the share call was issued rightfully and therefore the claim ungrounded or whether it had to be declared invalid with the result that the claim would have been successful.

61. Regarding the Applicant's allegation of a violation of the principle of equality, the Court considers that the Applicant had the possibility to confront the charges in both instances of the SCSC and, in fact, he did exercise its right presenting before the SCSC its claim and appeal. In addition, the Court considers that the justification provided by the Appellate Panel of the SCSC, in answering the aforementioned allegations concerning the principle of equality, is reasoned and fair.

62. 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 Case *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*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

63. Thirdly, the Applicant claims that the Board of Directors of PAK, based on the new PAK Law, assumed the role of the Exercising Authority authorizing the withdrawal of ownership over the Grand Hotel.

64. In this respect, the Court considers that the Applicant raises questions of legality and therefore it 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).

65. In addition, the Court notes that the Applicant also raises the issue of the compatibility of the PAK Law with the Constitution.

66. In this respect, the Applicant would not be an authorized party to refer to the Constitutional Court matters related to the compatibility of laws with the Constitution or questions of constitutional compatibility of a law when it is raised in a judicial proceeding. Compatibility of laws with the Constitution, or constitutional questions raised in judicial proceedings, are matters which are in the jurisdiction of the Constitutional Court, but only if they are referred by authorized parties, which in that case are, respectively, only the Assembly of Kosovo, the President of the Republic of Kosovo, the Government, the Ombudsperson (Article 113, 2. 1), and the Courts (Article 113. 8). (See Cases KI 118/14, Applicant: *Raiffeisen Bank Kosovo J.S.C*, Resolution

on Inadmissibility of 9 March 2015, KO04/11, Applicant: *Supreme Court of the Republic of Kosovo* requesting Constitutional Review of Articles 35, 36, 37 and 38 of the Law on Expropriation of Immovable Property, No. 03/L-139, Judgment of 1 March 2012; KO43/10, Applicant *LDK-AAK-LDD, Prizren MA,* Resolution on Inadmissibility of 25 October 2011, paragraphs 19-21; and KI230/13, Applicant *Tefik Ibrahimi,* Resolution on Inadmissibility of 19 May 2014, paragraphs 25-27).

67. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of his right to equality before the law, as guaranteed by Article 3 of the Constitution.

Allegations regarding violation of the protection of property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR

68. The Applicant also alleges that the challenged Judgments constitute a violation of the protection of property as guaranteed under Article 46 of the Constitution and Article 1 Protocol 1 to the ECHR.

69. In this regard, the Applicant claims that *"this is a clear violation,* inter alia*, of Article 1 of Protocol No. 1 of the ECHR, as well as of Articles 22, 32, and 46 of the Constitution of the Republic of Kosovo, besides constituting a violation of fundamental principles of the Rule of Law [...] PAK, acting as an agency of the Government of Kosovo unlawfully and without due process took ownership and possession of this property from the private owner with only a nominal compensation and without any judicial proceeding."*

70. In respect of the issue of compensation, the Appellate Panel of the SCSC in its Judgment held that the *"[...] the issue of the problems while implementing the commitments according to the Agreement and the issue of compensation – return of the invested means – should be subject to another court procedure."*

71. In this relation, the Court acknowledges that the applicant had a right to property, but the loss of that property was legitimate, namely (a) in accordance with law; (b) served a legitimate purpose (in the public interest); and (c) was reasonable and proportionate to the objective sought. Furthermore, the Court notes that the withdrawal of ownership over the shares of Grand Hotel by Decision of the PAK Board of Directors was reviewed and decided by the SCSC. Thus, the Court considers that the reasoning given in both decisions of the SCSC is clear, and after having reviewed the proceedings, the Court has also

found that the proceedings before the SCSC have not been unfair or arbitrary (See Case *Shub vs. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).

72. In conclusion, the Court finds that, the Applicant has not presented any convincing argument to establish that the alleged violations represent constitutional violations.

Allegations regarding violation of Article 31 of the Constitution and Article 6 of the ECHR

73. As stated above, the Applicant argues that the unequal treatment by the SCSC, its adjudication beyond the scope of the Applicant's claim, the application and interpretation of the PAK Law, and the unlawful interference with its possessions have violated in a variety of ways its right guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

74. Firstly, the Applicant argues that the SCSC had a legal obligation to allow the parties in the proceedings equal opportunities to produce evidence and to plead their case. However, according to the Applicant, it was not given a fair and impartial hearing and an opportunity to present its case.

75. In this regard, the Court notes that the Applicant has not presented any evidence or arguments as to how and why it was treated in an unequal manner and why it was not given a reasonable opportunity to produce evidence and plead its case before the SCSC.

76. In this respect, the court reiterates that dissatisfaction with the decision does not suffice for the Applicant to raise a credible allegation of a constitutional violation of the right to a fair trial. When alleging constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be grounded. (See Case No. KI198/13Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).

77. The Court considers that both the Specialized Panel and the Appellate Panel of the SCSC conducted the proceedings in a fair way and justified their decisions on the grounds of the Applicant's claim and the appeal.

78. In this respect, the Court also notes that the Specialized Panel and the Appellate Panel of the SCSC justified their decisions based on the evidence and reasoning provided by the Applicant, in its capacity as a claimant, and also based on the evidence and responses to the claim

submitted by PAK, in its capacity of the respondent. Based on the foregoing, the fact that the Applicant and PAK, both parties in the proceeding before the SCSC, *"were given the opportunity to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision"* shows that the Specialized Panel and the Appellate Panel of the SCSC justified and rendered their decisions in accordance with the principles guaranteed under the right to an adversarial trial. (See Case *Vermeulen v. Belgium*, ECtHR, No. 19075/91, Judgment of 20 February 1996).

79. Secondly, the Applicant argues that the SCSC adjudicated beyond the scope of the Applicant's claim. In this regard, the Applicant alleges that the scope of its claim was limited and that the SCSC was requested to answer a procedural question of fundamental importance, namely to determine that the Decision of the PAK Board of Directors was unlawful as *ultra vires*. In this respect, the Applicant alleges a violation of its rights guaranteed under Article 31 of the Constitution and Article 6 of the ECHR, because the SCSC *"[...] addressed the presented question only casually, and went beyond the question before it to approve the action of PAK as though PAK were the Exercising Authority."*

80. In this respect, the Court notes that the Appellate Panel of the SCSC held the following:

> "*Based on what was stated in the appeal, the Appellate Panel does not find any argument that the court exceeded the limitations given by the claim, because it only decided in one point of the enacting clause - "The claim is rejected as ungrounded", and nothing more.*
>
> *[...]*
> *The Appellate Panel assesses that the Trial Panel did not exceed its limits and did not exacerbate the Claimant because it had to evaluate whether the Claimant has given reason to PAK to issue the share call to be able to adjudicate the full request of the Claimant to declare the share call as invalid. After the Trial Panel came to the correct conclusion that it was within the power of PAK to issue a share call without consulting the SRSG or an arbitral tribunal it had to decide whether the performance of the Claimant necessitated the share call. Otherwise it would not have been able to decide whether the share call was issued rightfully and therefore the claim ungrounded or whether it had to be declared invalid with the result that the claim would have been successful."*

81. Thirdly, the Applicant further argues that by virtue of the new PAK Law, the Board of Directors of PAK assumed the role of the Exercising Authority and as a result unilaterally changed the parameters of the agreement by withdrawing its ownership over the Grand Hotel. Thus, the Applicant alleges that its right to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR were violated, because ,*"the interference of the legislature brought about a position that changed the status of the applicant as subject of law in his contractual relationships."*

82. In this regard, the Court notes that the Appellate Panel of the SCSC in its Judgment responded as following:

> *"Both requirements have been abolished by Art. 31. 4 of the PAK Law. The power of the SRSG was transferred by law to the Board of Directors of the Respondent.*
> *It is true that by Art.31.4 PAK Law the contractual duties and rights of the parties of the Commitment Agreement are changed. The Claimant loses the chance that the SRSG refrains from instructing a Share Call and he also loses the right to enter arbitration in case the SRSG does not exist anymore or - as it rather turned out - the executive capacities he had at the time this agreement was signed do not exist any longer.*
> *However these losses are not unconstitutional. The legislator may modify contractual relations and does it often [...]"*

83. Regarding the application of PAK Law by both instances of the SCSC, the Court refers to its own case law, whereby it concluded that as part of the Rule of Law principle and based on Article 102 [General Principles of the Judicial System] of the Constitution, *" [...] the Special Chamber of the Supreme Court, as part of the Kosovo judiciary, is under the constitutional obligation to apply laws adopted by the Kosovo Assembly."* (See Case KI25/10, Applicant: *Kosovo Privatization Agency,* Judgment of 30 March 2011, paragraph 56).

84. Moreover, once again the Applicant raises the issue of legality and the question of the compatibility of the PAK Law with the Constitution.

85. Regarding the issue of legality, the Court re-emphasizes that it is not its task to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

86. In respect to the question of the compatibility of the PAK Law with the Constitution, the Applicant would not be an authorized party to refer

to the Court such matters related to the compatibility of laws when it is raised in a proceedings before a court.

87. In addition, the Applicant argues that a violation of Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR implicitly causes violation of Article 31 of the Constitution and Article 6 of the ECHR, because it *"[...] had never had the facts complained of, fact relative to his property, being forcibly, unilaterally and illegally investigated judicially."*

88. In this respect, the Court notes that the Applicant has not presented any facts or convincing arguments as to how and why *" [...] the facts relative to his property were forcibly, unilaterally and illegally investigated judicially."*

89. In conclusion, based on the aforementioned, the Court concludes that the Applicant has not substantiated its allegations of violations of its rights to equality before the law, to protection of property and to a fair and impartial trial and thus the Referral is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) and (2), b) and d), of the Rules of Procedure on 28 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI168/14, Applicant Mabco Constructions and Eurokoha-Reisen - Constitutional review of the Judgment AC-I-13-0045-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 26 June 2014

KI168/14, Resolution on Inadmissibility of 28 August 2015, published on 8 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, the process of privatization, international agreements, ratione materiae jurisdiction, the right to fair and impartial trial, judicial protection of rights, intervenor status*

The Special Chamber of the Supreme Court rejected the Applicants' request for recognition of their status as interveners in the process of privatization of the GRAND Hotel in Prishtina. The Applicants, among others, complained to the Constitutional Court that the non-recognition of their status as interveners, violate their right to judicial protection of interests and the right to fair and impartial trial. The Applicant also complained that the disapproval of their request constituted a violation of international agreements that are binding on the Republic of Kosovo.

Regarding the allegations for international agreements, the Constitutional Court reiterated that it is not within the jurisdiction *ratione materiae* of the Court to assess the constitutionality of international agreements. As to the allegation for recognition of the status of an intervener, the Constitutional Court found that the Applicant did not justify the allegation of violation of constitutional rights and freedoms and have not sufficiently supported their allegations. The Referral was declared inadmissible in accordance with Article 48 of the Law and Rules 36 (2) (d) and 36 (3) (e) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI168/14
Applicants
Mabco Constructions and Eurokoha-Reisen
Constitutional review of the Judgment AC-I-13-0045-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 26 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicants

1. The Applicants are Mabco Constructions, with the seat in Lugano, Switzerland and Eurokoha-Reisen, with the main seat in Frankfurt, Germany, represented by its branch in Prishtina. The Applicants are represented by Mr. Bajram Morina, practicing lawyer in Gjakova.

Challenged decision

2. The Applicants challenge the Judgment AC-I-13-0045-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), of 26 June 2014, which refused the Applicants' submission to intervene on the side of the claimant.

3. The challenged decision was served on the Applicants on 14 July 2014.

Subject matter

4. The subject matter of the Referral is the constitutional review of the Judgment (AC-I-13-0045-A0001, of 26 June 2014), of the Appellate

Panel of the SCSC which, according to the Applicants' allegations violated their rights guaranteed by Article 3 [Equality Before the Law], Article 7 [Values], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 54 [Judicial Protection of Rights] and Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

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

Proceedings before the Constitutional Court

6. On 14 November 2014, the Applicants sent the Referral by post to the Court. The Court received the Referral on 17 November 2014.

7. On 24 November 2014, the President of the Court, by Decision GJR. KI168/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President by Decision, KSH. KI168/14, appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 1 December 2014, the Court notified the Applicants of the registration of Referral. On the same date, the Court submitted a copy of the Referral to the Special Chamber of the Supreme Court (hereinafter: the SCSC) and to the Privatization Agency of Kosovo (hereinafter: the PAK).

9. On 5 December 2014, the Court sent a letter with a copy of this Referral for information to NTP Unio Commerce, Zelqif Berisha, owner who filed Referral KI167/14, which Referral challenges the same Judgment of the Appellate Panel of the SCSC.

10. On 9 December 2014, the Court requested the SCSC to provide a copy of the receipt of service, which shows when the Judgment of the Appellate Panel of the SCSC (AC-I-13-0045-A0001 of 26 June 2014) was served on the Applicant.

11. On 13 December 2014, the SCSC submitted to the Court the copy of the receipt of service, which shows that the Judgment of the Appellate

Panel of the SCSC (AC-I-13-0045-A0001 of 26 June 2014) was served on the Applicant on 14 July 2014.

12. On 17 December 2014, the Court notified the Applicants of the Decision of the Court to reject the request for Interim Measures in the related Case KI 167/14 pending the final outcome of the Referral. (See Decision on Interim Measure, published on 17 December 2014)

13. On 26 June 2015, the President of the Court appointed Ivan Čukalović as Judge Rapporteur, replacing Arta Rama-Hajrizi. On the same date, by Decision of the President of the Court, Arta Rama-Hajrizi was appointed as member to the Review Panel, replacing Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.

14. On 6 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

As to the privatization of the Grand Hotel

15. In 2005, as a part of the privatization process, the Kosovo Trust Agency (hereinafter: KTA), initiated a "Special Spin Off" of sales, through privatization, of the facilities of the Grand Hotel in Prishtina.

16. In 2006, following the completion of the bidding process, background checks and the litigation at the Special Chamber, the KTA announced Zelqif Berisha, owner of the NTP Unio Commerce (Applicant in Case KI167/14) as the winning bidder.

17. On 10 August 2006, the KTA concluded a contract with Zelqif Berisha, owner of the NTP Unio Commerce to sell him the entire share capital of the NewCo Grand Hotel LLC (hereinafter: the Grand Hotel). Consequently, the share capital was transferred in its entirety and the Grand Hotel shares were registered in the Ministry of Trade and Industry in the name of the enterprise NTP Unio Commerce.

18. The contract signed between the KTA and Zelqif Berisha obliged him to meet certain requirements as specified in the Commitment Agreement. These requirements included the obligation to make certain financial investments in the building of the Grand Hotel and to maintain the employment of a certain number of employees within a certain time frame. A failure to meet these obligations could result in the withdrawal of the shares from the Applicant.

As to the co-ownership of the Applicants

19. Subsequently, in January 2007, Zelqif Berisha, concluded an Agreement of Understanding with the Applicants, whereby he sold 60% of the shares in the Grand Hotel to the Applicants.

20. On 5 June 2007, the Applicants initiated civil proceedings before the Municipal Court in Prishtina in an attempt to confirm the co-ownership over the shares of the Grand Hotel.

21. On 28 May 2009, the Municipal Court in Prishtina (Judgment, C. No. 1429/2007) approved the Applicants' claim and confirmed the Applicants' co-ownership over the shares of the Grand Hotel.

As to the withdrawal of shares by the PAK Board of Directors

22. On 31 May 2012, the Board of Directors of PAK, the legal successor of the KTA, determined that the enterprise NTP Unio Commerce had not acted in full compliance with employment and investment commitments that were defined in the Commitment Agreement. Therefore, the Board of PAK unanimously decided to exercise the Share Call Option and as such withdraw all the shares purchased by the NTP Unio Commerce.

23. As a result of the Decision of the PAK Board of Directors, the shares and the facilities of the Grand Hotel are now under PAK administration.

24. On 8 June 2012, NTP Unio Commerce, Zelqif Berisha, owner (Applicant in case KI167/14) filed a claim with the SCSC, challenging the validity of the Decision of the PAK Board of Directors dated 31 May 2012 to exercise a Share Call Option on the shares of the Grand Hotel. In addition it had also filed a request for preliminary injunction, which request was rejected as ungrounded by the Specialized Panel of the SCSC (Decision, C-I-12-0042 of 29 June 2012). Following an appeal against the Decision of the Specialized Panel of the SCSC filed by NTP Unio Commerce, Zelqif Berisha, owner (hereinafter: NTP Unio Commerce), the Appellate Panel of the SCSC (Decision, AC-I-12-0042 of 27 September 2012), approved the appeal as partly grounded and decided: *"to restrain the KPA from alienating the shares of the NewCo Grand Hotel to any third parties until the final decision regarding the merits of the claim."*

25. On 20 March 2013, the Specialized Panel of the SCSC (Judgment, C-I-12-0042 of 20 March 2013) rejected the claim filed by NTP Unio Commerce as ungrounded, reasoning that the violations of the Commitment Agreement by NTP Unio Commerce were egregious and that the PAK Decision to exercise the withdrawal of the shares of the Grand Hotel was valid.

26. Following the appeal filed by NTP Unio Commerce against the Judgment of the Specialized Panel of the SCSC (C-I-12-0042 of 20 March 2013), on 26 June 2014, the Appellate Panel of the SCSC rejected as ungrounded the appeal and upheld the aforementioned Judgment of the Specialized Panel of the SCSC.

27. As mentioned in paragraph 9, NTP Unio Commerce submitted a Referral to the Court, challenging the same Judgment of the Appellate Panel of the SCSC, of 26 June 2014. Thus, for the purposes of a full presentation of the completed procedures before the SCSC concerning the claim and appeal filed by NTP Unio Commerce, the Court wishes to refer to the summary of facts established in Case KI167/14.

As to the Applicants' submission to intervene at the SCSC

28. On 10 January 2014, while the appeal of the Claimant (NTP Unio Commerce, owner Zelqif Berisha and Applicant in case KI167/14) was pending before the Appellate Panel of the SCSC, the Applicants filed a submission to intervene on the side of the Claimant in the proceedings before the Appellate Panel of the SCSC.

29. In their submission, the Applicants requested to be recognized in the capacity of the interveners in the proceedings before the Appellate Panel of the SCSC. The Applicants further claimed that pursuant to Article 271 of the Law on Contested Procedure they met the requirements to be recognized in their capacity as the intervening party in this process.

30. On 14 February 2014, PAK in its capacity of the respondent filed an objection to the Applicants' submission, with the reasoning that the Applicants had no legal and material relation with PAK, but only an Agreement of Understanding concluded with Zelqif Berisha, owner of the NTP Unio Commerce.

31. On 31 February 2014, NTP Unio Commerce in the proceedings before the Appellate Panel of the SCSC also filed an objection to the Applicants' submission, stating that the Applicants are unlawfully requesting ownership rights over the Grand Hotel and thus they had no legitimacy in this matter.

32. On 26 June 2014, the Appellate Panel of the SCSC (Judgment, AC-I-13-0045-A0001) refused the submission of the Applicants.

33. In its Judgment, the Appellate Panel of the SCSC decided that, since both the Claimant (NTP Unio Commerce, owner Zelqif Berisha) and the Respondent (PAK) objected the legitimacy of the interveners as parties in the proceedings, pursuant to Article 270, paragraph 1, of the Law on Contested Procedure the Appellate Panel refused the Applicants' submission to be recognized as interveners in the proceedings before the SCSC.

Applicants' allegations

34. As mentioned above, the Applicants allege that the Judgment of the Appellate Panel of the SCSC (AC-I-13-0045-A0001 of 26 June 2014, refusing their submission to intervene on the side of the claimant in the proceedings before the Appellate Panel of the SCSC violated their rights guaranteed by Article 3 [Equality Before the Law], Article 7 [Values], Article 24 [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.

35. The Applicants state the following: "*Because having been ignored by PAK, for proceeding with the legitimization of real shareholders, because of amendment of KTA – PAK laws that is inconsistent with the Agreement on the protection of foreign investments, [...], because of ungrounded rejection of the request of the INTERVENERS to be the party in contested proceedings on the side of the claimant before the Special Chamber, because there is a grounded suspicion of interference with methods of organized crime by the governmental institutions and because they did not respect the legitimate human rights and disregard, respectively they acted contrary to terms of international agreements for the protection of foreign investments [...]*".

36. The Applicants further allege a violation of Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution. In this relation, the Applicants claim that they are foreign investors and that *"[...] the amendment of the PAK Law, which was recognized as the primary basis to deny the right of INTERVENERS, is contrary to the agreement on the protection of foreign investments in Kosovo, namely the agreement on the protection of foreign investments with Switzerland and the Federal Republic of Germany. In fact, the share purchase agreement with the claimant (Zelqif Berisha) was concluded at the time when the Law on KPA was in force, while the*

decision to call the share option was based on the law after the reorganization of PAK, which in this case should not have retroactive effect."

37. Finally, the Applicants conclude by requesting the Court to compel the SCSC to recognize the Applicants as intervening party in the proceedings in relation to the withdrawal of shares in the Grand Hotel by the Board of Directors of PAK.

Admissibility of the Referral

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

39. The Court takes into account Article 48 of the Law, which provides:

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

40. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

> *(2) "The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...], or*
>
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[...]*
>
> *(d) the Applicant does not sufficiently substantiate his claim".*

41. The Court notes that, in 2007, the Applicants had initiated civil proceedings on confirmation of co-ownership over the shares of Grand Hotel Prishtina before the Municipal Court in Prishtina.

42. However, the Court considers that these civil proceedings do not fall within the scope of the Referral and therefore the Court will only review the proceedings before the SCSC related to the subject matter of the Referral.

43. As mentioned above, the Applicants allege violation of their rights guaranteed by Article 3 [Equality Before the Law], Article 7 [Values], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 54 [Judicial Protection of Rights] and Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution.

44. In this regard, the Court notes that the Applicants only listed and described the content of the aforementioned provisions, but did not present any arguments or evidence in support of their allegations.

45. Furthermore, the Court reiterates that dissatisfaction with a judicial decision, or merely the mentioning of articles and provisions of the Constitution, does not suffice for the Applicants' allegations to rise to the level of a constitutional violation. When alleging constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be considered grounded (See Case No. KI198/13,*Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).

46. The Court considers that the Applicants have not explained how and why the conclusion of the Appellate Panel of the SCSC to refuse their submission to be recognized as interveners on the side of the Claimant in the proceedings before the SCSC has allegedly violated their rights and freedoms.

47. Furthermore, the Court reiterates that it is not its task under the Constitution to substitute the role of the regular courts in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

48. Furthermore, the Court notes that the Applicants are primarily not satisfied with the legal qualification of facts and the law a pplied by the Appellate Panel of the SCSC. The legal qualification of facts and applicable law are matters which fall within the scope of legality.

49. In this respect, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by regular courts, unless and in so far as they may have infringed rights and freedoms guaranteed by the Constitution (constitutionality).

50. Finally, the Applicants have not presented any convincing arguments to establish that the alleged violations mentioned in the Referral represent constitutional violations (see case *Vanek v. Republic of Slovakia*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred articles of the Constitution were violated, as required by Article 113.7 of the Constitution and Article 48 of the Law.

51. Based on the foregoing, the Court concludes that the Applicants have not justified the allegation of a violation of constitutional rights and freedoms invoked by them and the Applicants have not sufficiently substantiated their allegations.

52. In addition, as mentioned above, the Applicants raise the question of compatibility of the PAK Law with international bilateral agreements concluded and ratified by the Republic of Kosovo.

53. As mentioned above, the Applicants claim that "*the amendment of the PAK Law, which was recognized as the primary basis to deny the right of INTERVENERS, is contrary to the agreement on the protection of foreign investments in Kosovo, namely the agreement on the protection of foreign investments with Switzerland and the Federal Republic of Germany [...]*".

54. The Court also refers to Article 19 [Applicability of International Law] of the Constitution that establishes that:

    1. *International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law.*

    2. *Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo.*

55. In this regard, the Court reiterates that it is not empowered to review the compatibility of laws with international agreements. The Court in its case law has also reiterated that it is not empowered to review whether an international agreement is in conformity with the Constitution (See Referral KO95/13, Applicants: *Visar Ymeri and 11 other deputies*, Judgment of 2 September 2013, paras. 100 and 101).

56. Therefore, regarding the Applicants' allegation that the PAK Law is not in conformity with the international bilateral agreements ratified by the Republic of Kosovo, the Court holds it is not within its jurisdiction *ratione materiel* to review the constitutionality of laws with international agreements.

57. For the foregoing reasons, the Court concludes that Referral is to be declared:

    a) Inadmissible because it is not within the Court's jurisdiction *ratione materiae* to review the constitutionality of laws with international agreements; and

    b) Inadmissible by reason of being manifestly ill-founded because the Applicants have not justified the allegation of a violation of constitutional rights and freedoms invoked by them and the Applicants have not sufficiently substantiated their allegations.

FOR THESE REASONS

The Constitutional Court, pursuant to 48 of the Law and Rule 36 (2), b) and d) and Rule 36 (3), e) of the Rules of Procedure, on 28 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI142/14, Applicant Bajram Bajgora - Constitutional review of Judgment Ac. No. 1429/2014 of the Court of Appeal, of 7 July 2014

KI142/14, Decision to strike out the Referral of 6 August 2015, published on 9 September 2015

Keywords: *Individual referral, inadmissible referral, housing issue, sale-purchase contract, protection of property*

The Court of Appeal in Kosovo rejected as ungrounded the appeal of the Applicant regarding a sale-purchase contract concluded between the Municipality of Podujeva and the third parties. The Applicant filed complaint with the Constitutional Court regarding his housing rights without reference to any constitutional provision in particular.

The Constitutional Court concluded that the Applicant did not complete his Referral in the manner provided by the law despite the request of the Court to correct his Referral. The Referral was summarily rejected and struck out in accordance with Rule 32 (5) of the Rules of Procedure.

DECISION TO STRIKE OUT THE REFERRAL
in
Case no. KI142/14
Applicant
Bajram Bajgora
Constitutional Review of Judgment Ac. No. 1429/2014
of the Court of Appeal, dated 7 July 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Bajram Bajgora, from Podujevo (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Judgment (Ac. No. 1429/2014, dated 7 July 2014) of the Court of Appeal which was served on him on 4 August 2014.

Subject matter

3. Subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights as guaranteed by *"Article 46 [Protection of Property] of Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 17 of the Universal Declaration of Human Rights (hereinafter, UDHR)."*

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 Constitutional Court

5. On 19 September 2014, the Applicant submitted the Referral, through postal service, to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 24 September 2014, the Court informed the Applicant that it has received a Referral under his name and that the same was not signed. On that occasion, the Court requested from the Applicant to appear before the Secretariat of the Court within seven (7) days from the receipt of this letter in order to sign the Referral.

7. On 7 October 2014, the President of the Court by Decision GJR. KI142/14, appointed Judge Altay Suroy as Judge Rapporteur and by Decision KSH. KI142/14 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 21 January 2015, the Court sent a second letter to the Applicant reminding him that he has still not signed his Referral and informed him that signing the Referral is a procedural precondition for the Court to review his allegations.

9. Up to date, the Applicant has not responded to the requests of the Court.

10. On 29 June 2015, the President of the Court, by Decision no. KSH. KI142/14, appointed herself as a member of the Review Panel, replacing Judge Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.

11. On 7 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

12. The Applicant filed a claim with the Basic Court in Prishtina requesting the annulment of a sales contract which was concluded between the Municipality of Podujevo and a third party regarding an immovable property.

13. On 24 February 2014, the Basic Court in Prishtina (Judgment C. no. 471/2010) rejected the claim of the Applicant as ungrounded.

14. On 7 July 2014, the Court of Appeal (Judgment C. no. 471/2010) rejected as ungrounded the appeal of the Applicant filed against the Judgment of the Basic Court.

Applicant's allegations

15. The Applicant claims that the Court of Appeal violated his right to property as guaranteed by the Constitution and the UDHR.

16. In relation to this claim, the Applicant alleges that *"[...] the justice in these past three decades has declined my right to property over the apartment which I have gained in 1961."*

17. The Applicant requests the Court: *"[...] to return my apartment on which I have lived for a long time together with my family."*

Assessment of the admissibility of the Referral

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

19. Thus, the Court refers to the provision of the Law which provides:

    Article 22.4 [Processing Referrals]

    > *"[...] 4. If the referral [...] is [...] incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for supplementing the respective referral [...]".*

20. In addition, the Court refers to Rules 29 (1) and 32 (5) of the Rules of Procedure, which provide:

    Rule 29 [Filing of Referral and Replies]

    > *"(1) [...] The referral [...] shall include the date of filing, and the signature of the person filing the referral. [...]"*

    Rule 32 [Withdrawal, Dismissal and Rejection of Referrals]

    > *"(5) [...] The Court may summarily reject a referral if the referral is incomplete [...] despite requests by the Court to the party to supplement [...] the referral [...]"*

21. In this regard, the Court notes that the Applicant filed an unsigned Referral through postal services on 19 September 2014.

22. The Court sent two letters to the Applicant requesting him to fulfill the procedural requirement as foreseen by Rule 29 (1) of the Rules of Procedure, respectively to sign the Referral submitted under his name.

23. However, the Court observes that the Applicant has not responded to either of the letters sent by the Court and thus failed to meet this procedural requirement.

24. Consequently, the Court considers that it cannot take into account the Applicant's allegations without him fulfilling the aforementioned procedural requirement.

25. In sum, the Court considers that the Referral is incomplete and must be summarily rejected and stricken out in accordance with Rule 32 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 32 (5) of the Rules of Procedure, on 6 August 2015, unanimously

DECIDES

I. TO STRIKE OUT the Referral;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI170/14, Applicant Adem Bajqinca - Constitutional Review of Judgment Rev. 533/2008, of the Supreme Court, of 9 February 2010

KI170/4, Resolution on Inadmissibility of 31 July 2015, published on 9 September 2015

Keywords: *Individual referral, out of time referral, bodily injury, monthly pension, statutory limitation, civil procedure*

The Supreme Court approved the request for revision of the Applicant's employer stating that the Applicant's right to compensation for damage caused at work has been time-barred. The Applicant appealed to the Constitutional Court alleging that the Supreme Court violated his constitutional rights without reference to any constitutional provision in particular.

The Constitutional Court found that the Referral was submitted after expiry of legal deadline of 4 (four) months. The Referral was declared inadmissible as out of time, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI170/14
Applicant
Adem Bajqinca
Constitutional Review of the Judgment Rev. 533/2008, of Supreme Court, of 9 February 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Adem Bajqinca, with residence in Bardhi i Madh, Municipality of Fushë-Kosovë (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment, Rev. no. 533/2008 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 9 February 2010, which was served on the Applicant on 25 February 2010.

Subject Matter

3. The subject matter is the request for constitutional review of Judgment, Rev. 533/2008 of the Supreme Court, of 9 February 2010. The Applicant alleges that the Supreme Court, by approving the revision of the counterparty (the Applicant's employer), has violated his rights protected by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), but without specifying the constitutional provision.

Legal Basis

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

Proceedings before the Constitutional Court

5. On 25 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 December 2014, the President by Decision GJR. KI170/14, appointed Judge Altay Suroy as Judge Rapporteur and by Decision KSH. KI170/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 23 January 2015, the Court notified the Applicant on registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.

8. On 5 March 2015, the Court requested from the Basic Court in Prishtina the receipt of service, indicating the date when the last decision was served on the Applicant.

9. On 11 March 2015, the Basic Court in Prishtina submitted the requested document to the Court, which shows that the Applicant was served with the challenged Judgment on 25 February 2010.

10. On26 June2015, by Decision Nr. K.SH.KI 170/14, the President of the Court appointed Judge Arta Rama-Hajrizi as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on26June2015.

11. On 7 July 2015, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral.

Summary of facts

12. The Applicant was employed in Kosovo Energy Corporation (hereinafter: KEK).

13. On 17 October 1999, the Applicant suffered bodily injuries while working at his working place. Consequently, he lost his work ability, and for that reason he was retired and he earns a monthly pension in a certain amount of money.

14. On an unspecified date, the Applicant submitted a lawsuit to the Municipal Court in Prishtina against KEK, requesting to oblige KEK *"to pay in name of the rent for the time period from 17.10.1999 and onward the difference between the pension and salary, which he would have earned if he was employed"*.

15. On 1 June 2006, the Municipal Court in Prishtina, by Judgment, C1. no. 267/05, rejected the Applicant's claim "*because of the statute of limitation of the claim*".

16. Against this Judgment the Applicant filed an appeal within the legal time limit, with the request to annul it and remand the case for retrial.

17. On 27 August 2008, the District Court in Prishtina rendered its Judgment, Ac. no. 859/2006, by which it modified the Judgment, C1. no. 267/05 of the Municipal Court, so that it obliged the responding party (KEK) in this contest *"to pay the Claimant Adem Bajqinca, from the village of Bardh i Madh, a certain amount of money in name of the compensation of the rent realized for the period from 07.09.2002 until 07.09.2005, and starting from 07.09.2005, pay him the monthly amount as long as the legal conditions for payment are applicable, as well as the contested procedure expenses, within 15 days, under the threat of forced execution"*.

18. On an unspecified date, KEK filed a request for revision with the Supreme Court, *"due to substantial violations of provisions of contested procedure and erroneous application of substantive law, with the proposal that the challenged judgment be modified so that the statement of claim be rejected as ungrounded."*

19. On 9 February 2010, the Supreme Court rendered the Judgment Rev. 533/2008, and approved the request for revision of Judgment Ac. no. 859/2006, of the District Court in Prishtina.

20. In its reasoning, the Supreme Court stated, *"Since the damage was caused on 17.10.1999, the time limit of 3 years for the submission of the request for compensation of the damage is calculated from this date, not from the date decided by the second instance court. Considering that the claim for the payment of the rent due to the accident caused at work was submitted on 07.09.2005, the*

allegations in the revision that the request of the claimant is time-barred by statutory limitation are grounded".

Applicant's Allegations

21. The Applicant alleges that by the Judgment Rev. I. 533/2008, of 9 February 2010, by which the Judgment of the District Court in Prishtina for compensation on behalf of rent for a certain period of time was modified, the Supreme Court has violated the rights protected by the Constitution, but without specifying the relevant constitutional provisions.

Admissibility of the Referral

22. The Court notes that in order to be able to adjudicate the Applicant's Referral, it has to first examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

23. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

24. In addition, 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…".*

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

> *"(1) The Court may consider a referral if:*
>
> > *[…]*
> > *(c) 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. The Court notes that the last decision in the proceedings before the regular courts was that of the Supreme Court, rendered on 9 February 2010, and which was served on the Applicant on 25 February 2010,

whereas the Applicant submitted the Referral to the Court on 25 November 2014, i.e. more than 4 months from the date when the Applicant was served with the decision of the Supreme Court.

27. It follows that the Referral is inadmissible as out of time, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 31 July 2015, 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 paragraph 4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI184/14, Applicant Maliq Demiri - Constitutional Review of the list of the Privatization Agency of Kosovo of the employees entitled to 20% proceeds from the sale of Socially Owned Enterprise "Ramiz Sadiku"

KI184/14, Resolution on Inadmissibility of 31 July 2015, published on 9 September 2015

Keywords: *Individual referral, inadmissible referral, Privatization Agency of Kosovo, non-exhaustion of legal remedies, principle of subsidiary*

The Privatization Agency of Kosovo informed the Applicant about his right, to appeal to the Special Chamber of the Supreme Court regarding the realization of the proceeds from the privatization of SOE Ramiz Sadiku in Prishtina. The Applicant filed complaint with the Constitutional Court for protection of his rights guaranteed by the Constitution, but without specifying any constitutional provision in particular.

The Constitutional Court found that the Applicant did not act according to the instructions of the Kosovo Privatization Agency and that he had not taken all reasonable actions for exhaustion of available legal remedies. The Referral was declared inadmissible for non-exhaustion of legal remedies, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI184/14
Applicant
Maliq Demiri
Constitutional Review of the list of the Privatization Agency of Kosovo of the employees entitled to 20% proceeds from the sale of Socially Owned Enterprise "Ramiz Sadiku"

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was filed by Mr. Maliq Demiri, from the village Syriganë, Municipality of Skënderaj, with residence in "Ulpiana" neighborhood in Prishtina (hereinafter: the Applicant), who in this case represents also 3 (three) other individuals: Mr. Idriz Zhinipotoku; Mr. Rrahim Uka and Mr. Zoran Petrović.

Challenged Decision

2. The Applicant does not challenge any specific decision of a public authority, but only requests to be included in the list of the Privatization Agency of Kosovo (hereinafter: PAK), of employees entitled to receive a 20% share of the sale proceeds of the Socially-Owned Enterprise "Ramiz Sadiku" (hereinafter: the SOE "Ramiz Sadiku").

Subject Matter

3. The subject matter of the Referral is the constitutional review of the PAK list of employees entitled to 20% of the proceeds of the sale of the SOE "Ramiz Sadiku".

Legal Basis

4. The basis for filing the Referral is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of the Law and Rule 56 of the Rules of Procedure.

Proceedings before the Constitutional Court

5. On 22 December 2014 the Applicant submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) the Referral for assessment of the constitutionality and legality of the PAK list of employees entitled to 20% proceeds from the sale of the SOE "Ramiz Sadiku".

6. On 13 January 2015 the President, by Decision GJR. KI184/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision KSH. KI184/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani (members).

7. On 22 January 2015 the Court notified the Applicant of the registration of his Referral no. KI184/14.

8. On 24 February 2015 the Court, pursuant to Article 21 of the Law and Rule 29 (2) (c) of the Rules of Procedure, requested the Applicant to submit the power of attorneys signed by the persons, allegedly represented by him. The Court requested the Applicant to attach the challenged decision and documents relevant to their case.

9. On 10 March 2015, the Applicant submitted to the Court the requested power of attorneys and a number of PAK and EULEX documents, but he did not submit any specific decision challenged by them.

10. On26 June2015,by Decision Nr. K.SH.KI 170/14, the President of the Court appointed Judge Arta Rama-Hajrizi as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on26June2015.

11. On 6 July 2015, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral.

Summary of Facts

12. Despite the fact, that the Applicant represents with power of attorney also three (3) other individuals, the allegations raised by him in the Referral, are mainly his personal allegations.

13. The Applicant was employed with the SOE "Ramiz Sadiku" as an installer of ceramic tiles from 1977 until 1989, when he was dismissed from his job.

14. By request of 19 December 2014, the Applicant requested from PAK, as the successor of the Kosovo Trust Agency (hereinafter: the KTA), to be included in the final list of employees who will receive 20% of the proceeds from the sale of the SOE "Ramiz Sadiku".

15. On 24 December 2014 PAK by responding to the Applicant's request, *inter alia*, clarified that:

    "On 11 August 2007, the Agency published the preliminary list of employees who will receive 20% from the sale of the SOE. The Applicant was entitled to file an appeal against this list within twenty (20) days of the publication with the committee for review of appeals in the Agency.

    On 7 March 2009, the Agency published the final list of employees entitled to the proceeds from the sale of SOE. Against this list, the Applicant was entitled to appeal, within twenty (20) days from the day of its publication, with the Special Chamber of the Supreme Court (hereinafter: the SCSC). The SCSC decided on the final list of employees that would benefit from the 20%, by final Judgment of 22 April 2013."

16. The Applicant, in two separate letters of 10 June 2014 and 5 January 2015, requested assistance from EULEX to be included in the list of employees who would benefit from the 20% of the proceeds from the sale of SOE "Ramiz Sadiku".

17. EULEX in two separate letters, of 17 June 2014 and 13 January 2015, responded to the Applicant, by explaining that EULEX is not competent for his case, as well as by clarifying the proceedings that he would need to follow to exercise his right.

Applicant's Allegations

18. The Applicant alleges that PAK violated his rights guaranteed by the Constitution, without mentioning any specific provision of the Constitution, because his name was not included in the list of employees who have benefited from 20% of the proceeds from the sale of the SOE "Ramiz Sadiku".

Assessment of the Admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, 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.

20. In this respect, 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."*

21. In addition, Article 47.2 of the Law provides that:

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

22. In this case the Court also refers to Rule 36 (1) (b) of Rules of Procedure:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted*
> *[...]".*

23. From the case file, the Court notes that the Applicant does not challenge any specific decision of a public authority, related to his allegation of the violation of his constitutional rights. In fact, the Applicant did not specify what provision of the Constitution has been violated. However, the Court, *inter alia*, understands that it is about the rights deriving from Article 46 [Protection of Property], of the

Constitution and Article 1 [Protection of Property], of Protocol 1 to the ECHR.

24. From the clarification provided by PAK to the Applicant regarding his request, the Court notes that the Applicant was entitled to file an appeal against the preliminary list of the KTA within 20 (twenty) days after the date of its publication, with the KTA Committee for Review of Appeals, and that he also had the right to appeal against the final list of PAK, within 20 (twenty) days from its publication, to the SCSC *[pursuant to Article 10 (6) of UNMIK Regulation, No. 2003/13, of 9 May 2003].*

25. The Court notes that, despite the fact that the Applicant had the possibility to appeal against the preliminary list of the KTA and the possibility of appeal against the final list of the PAK, he did not use this right and that there are no facts that indicate that he was prevented, in any way, from doing so.

26. In this case, it is clear that the Applicant missed the legal deadlines to exhaust effective legal remedies against the decisions of the KTA and PAK regarding the non-inclusion of his name in the list of employees that would benefit from 20% of the proceeds from the sale of the SOE "Ramiz Sadiku". In this regard, it cannot be said that the appellant did everything that could reasonably be expected of him to exhaust available legal remedies (see, *mutatis mutandis*, ECHR, Case *D. H and others v. Czech Republic*, no. 57325/00, § 116, Decision of 13 November 2007).

27. Therefore, in this regard, the Court considers that the Applicant's Referral does not meet the procedural admissibility requirements, as provided by Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, due to the fact he failed to substantiate that he had exhausted all legal remedies under Kosovo law for challenging the KTA and PAK lists.

28. The Court reiterates that the principle of subsidiarity requires that the Applicant must 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 the fundamental rights. Otherwise, the Applicant risks 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 regular proceedings. This rule is based on the assumption that the Kosovo legal order shall provide an effective legal remedy for the violation of constitutional rights. (See Resolution on Inadmissibility, KI41/09, of 21 January 2010, *AAB-RIINVEST L.L.C. Prishtina v.*

Government of the Republic of Kosovo, and *mutatis mutandis,* ECHR, *Selmouni v. France,* no. 25803/94, Decision of 28 July 1999).

29. From the foregoing reasons, the Court concludes that the Applicant's Referral does not meet the procedural admissibility requirements due to non-exhaustion of legal remedies.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 31 July 2015, 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 paragraph 4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI16/15, Applicant Dragomir Eraković - Constitutional review of Decision AC-I-14-0044 of the Appellate Panel of the Special Chamber of the Supreme Court, of 5 September 2014

KI16/15, Resolution on Inadmissibility of 30 July 2015, published on 9 September 2015

Keywords*: Individual Referral, manifestly ill-founded, interim measure, access to the court, the right to fair and impartial trial, protection of property, active legitimacy, transformation of social property*

Special Chamber of the Supreme Court rejected the Applicant's appeal regarding the rights of his property over a social enterprise that was transformed in the process of privatization. The Applicant filed complaint with the Constitutional Court alleging a violation of fair trial and right to property. The Applicant also requested the imposition of interim measure.

The Constitutional Court noted that the regular courts reasoned in their decisions why the Applicant did not have legal legitimacy and that the proceedings in entirety, were not unfair or arbitrary. The court also rejected the imposition of interim measure as there was no *prima facie* case. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) and 55 (5) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI16/15
Applicant
Dragomir Eraković
Constitutional review of Decision AC-I-14-0044 of the Appellate Panel of the Special Chamber of the Supreme Court, of 5 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Dragomir Eraković from Mitrovica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision AC-I-14-0044 of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the Appellate Panel), of 5 September 2014, which was served on the Applicant on 17 October 2014.

Subject matter

3. The subject matter is the request for constitutional review of the abovementioned decision of the SCSC. The Applicant claims that this decision has violated Article 24, 31, 32, 46, 54, 159 and 160 of the Constitution and Articles 6, 13 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and item 1 of Protocol 1 of this Convention (hereinafter: the ECHR).

4. The Applicant at the same time requests the imposition of Interim Measure, by which the Court "*would suspend the liquidation proceedings in order to avoid irreparable damage.*"

Legal basis

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

Proceedings before the Constitutional Court

6. On 16 February 2015, the Applicant submitted via mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 12 March 2015, by Decision GJR. KI16/15, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, by Decision KSH. KI16/15, the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 29 April 2015, the Court informed the Applicant and the Appellate Panel of SCSC about the registration of the Referral.

9. On1July2015,by Decision GJR. KI16/15, the President of the Court appointed Judge Arta Rama-Hajrizi as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on26June2015.

10. On 6 July 2015, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral.

Summary of facts

11. On 28 December 1992, the socially owned enterprise "Bair" finished the transformation of the ownership into a joint stock company of mixed ownership, and is registered at the Commercial Court in Prishtina as J.S.C. "Tabak", where Dragomir Eraković was appointed as director of the company and authorized representative.

12. With transformation of the ownership of the socially owned enterprise "Bair", the company employees have acquired total ownership of 8584 shares, which in overall capital makes 49% of the shares. The rest of the shares were in the ownership of JSC "Duvan" Ljubovija (40%) and the Fund for Development of Serbia (11%).

13. In the time period 1999-2001, in accordance with UNMIK Regulation, this enterprise, is transferred under the administration of the Kosovo Trust Agency (now the Privatization Agency of Kosovo), and on 12 September 2001, is registered as a new company "N.P.G.P.D. BAIR".

14. On 14 April 2008, the Applicant submitted to the Privatization Agency of Kosovo (hereinafter: PAK) the notice of intention to file a claim with the Special Chamber of the Supreme Court (hereinafter: the SCSC), in order to protect the rights acquired with the transformation of the ownership, which is made on 28 December 1992.

15. On 31 January 2012 the Applicant in capacity as a director of "L.L.C. Tabak" filed claim No. SCC-12/048 against the PAK for *"compensation of damage due to violation of the ownership rights and disabled rights to claims."*

16. On 23 May 2013, the PAK rendered decision, by which notified all stakeholders that the liquidation proceedings of the newly formed company "N.P.G.P.D. BAIR" have been initiated. At the same time, the PAK invites "*all creditors and owners and all persons alleging to have the right to claim or interest towards the company or assets of the company, to file evidence of claim, starting from 17 June 2013 up to 31 July 2013."*

17. On 30 September 2013, the SCSC requests the Applicant *"to submit a power of attorney authorizing his representative in proceedings before the SCSC as well as evidence that such a power of attorney is issued by a person who is authorized under the applicable law."*

18. By the same order, the Applicant is informed that, if he does not comply with the SCSC order, the Applicant's claim will be rejected as inadmissible.

19. On 14 October 2013, the Applicant submitted the power of attorney to the SCSC, which was issued to Goran Milenković. However, the Applicant in the power of attorney did not refer to his status as a director of "LLC Tabak" nor submitted any evidence, by which he would show that the Applicant is an authorized person to sign a power of attorney on behalf of "LLC Tabak."

20. On 29 January 2014, the SCSC rendered Decision (No. C-I-12-0004) by which the Applicant's claim was rejected as inadmissible because the Applicant failed to show that he possesses active legitimacy in the dispute, as requested by the SCSC order of 30 September 2013.

21. On 14 February 2014, the Applicant filed an appeal with the Appellate Panel of SCSC, by which he requested the repetition of procedure and annulment of the Decision of the SCSC (No. C-I-12-0004).

22. On 5 September 2014, the Appellate Panel of SCSC, by Decision (No. AC-I-14-0044) rejected the Applicant's appeal as ungrounded with the following reasoning:

> *"... that the claimant could easily present this evidence during the proceedings before the first instance court because this is an old decision of the Commercial Court in Prishtina from 1992 was available to the claimant. However, he did not present that document before the Special Chamber although by the order of 10 September 2013, it was ordered to submit any evidence that would prove that the power of attorney was duly issued by an authorized person in order to serve a purpose which is provided by the applicable law."*
>
> *"... The emphasis put on the capacity as a Director of the company, while it was not supported by concrete evidence is not sufficient, therefore, the court has rightly requested to clarify with concrete evidence whether the person who issued a power of attorney was authorized by the document under the applicable law ..."*

Applicant's allegation

23. The Applicant alleges that the regular courts, by rejecting in both instances the claimant's statement of claim due to lack of active legitimacy violated the *"right of access to court"* and the rights guaranteed by Articles 24, 31, 32, 46, 54, 159 and 160 of the Constitution and Articles 6, 13 and 14 of the ECHR and Protocol 1, item 1 of the ECHR.

24. The Applicant requests the Court to *"declare the Referral admissible... and based on the found violations of human rights to order the PAK... to hold that there has been a violation of the claimant's property rights and to oblige PAK"* to compensate him for the damage due to violation of property rights and to grant compensation for the property, as mentioned on page 17, subparagraph III, of the Applicant's Referral before the Constitutional Court.

Admissibility of the Referral

25. The Court shall examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

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

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

27. The Court 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."*

28. In addition, the Court recalls Rule 36 (2) (b) of the Rules of Procedure, which provides:

> *„(2) The Court shall declare 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."*

29. The Court notes that the Applicant based his Referral on *"violation of the right of access to court"* and that all other violations of the Constitution, which the Applicant states in the Referral, arise due to the decisions of the regular courts to reject the statement of claim because of the lack of active legitimacy of the claimant.

30. Furthermore, the Court notes that the Applicant in the proceedings before the regular courts acted as a director of *"LLC Tabak"*, trying to represent the legal person and the interests of the 31 employees as shareholders of the company.

31. However, before the Court he submitted the Referral as an individual, stating that he is pensioner by profession and at the same time he requested the Court to resolve the property issues concerning third parties (other shareholders).

32. The Court notes that the Applicant's allegation of *"violation of the right of access to court"*, where he as a director tried to represent the legal person "LLC Tabak," and the interests of 31 employees as shareholders of the company are not accurate, because on 30 September 2013 the SCSC ordered the Applicant *"to submit a power of attorney authorizing his representative in proceedings before the SCSC as well as evidence that such a power of attorney has been issued by a person who is authorized for this under the applicable law."*

33. The Applicant was given an opportunity to submit in the proceedings before the SCSC the evidence indicating that he has the authorization to represent the legal person "LLC Tabak" and other shareholders. This factual situation was determined by Decision (No. C-I-12-0004 of the SCSC), of 29 January 2014.

34. The Constitutional Court holds that the SCSC Decision (No. C-I-12-0004) and the Decision of the Appellate Panel of the SCSC (No. AC-I-14-0044) provide a reasoned answer as to why the Applicant does not have active legitimacy to represent the legal person "LLC Tabak" and other shareholders.

35. Furthermore, the Court notes that the Applicant's allegations of *"violation of the right of access to court",* to him as a natural person and as the owner of a certain number of shares acquired by the transformation of the ownership, are not grounded, because the Applicant failed to submit evidence that he tried to exercise these rights in the proceedings before the regular courts.

36. The Applicant, as well as other shareholder mentioned by the Applicant in the Referral, were provided the possibility to file such claims in the proceedings before the PAK, which by a notification dated 23 May 2013, *"invited all persons claiming to have the right to claim or interest towards the company or assets of the company, to file evidence of claim, starting from 17 June 2013 to 31 July 2013."*

37. Furthermore, the Court has not examined other violations of the Constitution and the ECHR alleged by that the Applicant, which essentially derive from the violation of the right of access to the court because these Applicant's allegations are not correct and are contrary to the documents which the Applicant submitted to the Court.

38. The 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. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case:

Garcia Ruiz vs. Spain, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility, of 16 December 2011).

39. The Court notes that the Applicant is not, mainly, satisfied with the legal qualification of the facts and the law applied by the regular courts. Legal qualification of the facts and applicable law are matters which fall under the domain of legality.

40. The Applicant has not submitted any *prima facie* evidence of violation of his constitutional rights (see: *Vanek vs. Slovak Republic*, no. 53363/99, ECHR Decision as to admissibility of application, of 31 May 2005).

41. The Court further reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings in his case, cannot of itself raise an arguable claim for breach of the Constitution (see: *mutatis mutandis*, ECHR Judgment No.5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005*).

42. The Applicant was afforded the opportunity to present his case and to challenge the interpretation of the law, which he considers is wrong, before the PAK, the SCSC and the Appellate Panel of SCSC in the regular court proceedings.

43. After the review of the proceedings in its entirety, the Court has not found that the respective proceedings were in any way unfair or arbitrary (see: *mutatis mutandis, Shub against Lithuania,* ECHR Decision on admissibility of application No. 17064/06, of 30 June 2009).

44. The Court considers that the admissibility requirements were not met. The Applicant has failed to show and substantiate the allegation that his constitutional rights and freedoms have been violated by the challenged decision.

45. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

Request for Interim Measure

46. As it was stated above, the Applicant also requests the Court "*To impose interim measure, by which the Court would suspend the liquidation procedure to avoid the unrecoverable damage*".

47. In order for the Court to imposes Interim Measure pursuant to Rule 55 (4 and 5) of the Rules of Procedure, it is necessary 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."*

48. As stated above, the Applicant's Referral is inadmissible. For this reason, there is no *prima facie* case for granting Interim Measure. Therefore, the request for Interim Measure must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (2) (b) and 55 (5) of the Rules of Procedure, in the session held on 30 July 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI49/15, Applicant Veli Kuçi - Constitutional Review of Judgment PML. no. 65/ 2015, of the Supreme Court of 26 March 2015

KI49/15, Resolution on Inadmissibility of 8 July 2015, published on 9 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, equality before the law, the right to liberty and security, the right to fair and impartial trial, the criminal offense of fraud, aggregate punishment of imprisonment*

The Supreme Court rejected as ungrounded the request for protection of legality filed by the Applicant regarding the aggregate punishment of imprisonment because of the commission of criminal offense of fraud. The Applicant filed complaint with the Constitutional Court, alleging that he was unfairly convicted and that the decisions of the regular courts should be annulled.

The Constitutional Court noted that Applicant has not provided any prima facie evidence which would point out to a violation of his constitutional rights, and that the proceedings before the regular courts were not in any way unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI49/15
Applicant
Veli Kuçi
Constitutional Review of Judgment PML. no. 65/2015, of the Supreme Court of 26 March 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Veli Kuçi, from the village of Shiroka, Municipality of Suhareka (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Judgment PML. no. 65/2015 of the Supreme Court of 26 March 2015.

Subject Matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court.The Applicant considers that "*the proceedings before the regular courts were unfair*", and that Articles 24 [Equality Before the Law], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have 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 Constitutional Court of the Republic of Kosovo (hereinafter the Law) and Rule 56 of the Rules of Procedure of

the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 20 April 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 June 2015 by Decision no. GJR. KI49/15 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision no. KSH. KI49/15, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 18 June 2015 the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. On 8 July 2015 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

9. On 21 December 2009 by Judgment P. no. 1931/2009, of the Municipal Court in Prishtina, the Applicant was found guilty of ten criminal offences of Fraud under Article 261 paragraph 1 of the Criminal Code of Kosovo (hereinafter: the CCK) and he was sentenced by aggregate punishment of imprisonment of 2 (two) years and two months.

10. The Municipal Public Prosecutor in Prishtina within the legal deadline filed an appeal against the Judgment (P. no. 1931/2009) due to the decision on punishment, with the proposal that the Judgment be modified and that the longer imprisonment sentence be imposed on the accused.

11. The Applicant submitted appeal within legal deadline against Judgment (P. no. 1931/2009) due to essential violations of the criminal procedure provisions, erroneous and incomplete determination of factual situation, erroneous application of the substantive law and decision on punishment with the proposal that the judgment be annulled and the case be remanded to the first instance court for retrial.

12. On 12 March 2013 the Court of Appeal of Kosovo by Judgment PA 1 no. 441/12 rejected as ungrounded the appeals of the Municipal Public Prosecutor in Prishtina and of the Applicant and upheld the Judgment of the Municipal Court in Prishtina (P. no. 1931/09).

13. On 23 January 2015 the Applicant filed a request for protection of legality against the Judgment of the Court of Appeal of Kosovo (PA 1 no. 441/12) and the Judgment of the Municipal Court in Prishtina (P. no. 1931/09).

14. On 26 March 2015 the Supreme Court of Kosovo by Judgment PML. no. 65/2015 rejected as ungrounded the request for protection of legality, with the following reasoning:

> *"... In support of all administered evidence, it results that the conclusions of the courts were fair and lawful, given that within specific actions, the convict on behalf of the Agency for mediation for employment, asked for money to obtain visas for them and he took from them a certain amount, although he knew that he could not accomplish that, and thus he deceived the injured...".*

Applicant's Allegations

15. The Applicant alleges that the regular courts violated the rights guaranteed by Articles 24 [Equality Before the Law], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution.

16. The Applicant alleges that "*he did not commit this criminal offence and that he returned to all of the parties the entire amount of money to the last cent.*"

17. The Applicant considers that *"he was unfairly convicted and he requests to be released from serving the sentence and to annul the judgments, by which he was convicted."*

Admissibility of the Referral

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

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

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

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

20. The Court also refers to Article 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".

21. Moreover, the Court recalls Rule 36 (2) (b) of the Rules of Procedure, which provides:

„ (2) The Court shall declare 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 ".

22. The Court notes that the Applicant reiterates the same allegations in the proceedings of the request for protection of legality before the Supreme Court of Kosovo, which by Judgment PML. No. 65/2015 of 26 March 2015 provided a reasoned response to all Applicant's allegations regarding the reasons for the application of the relevant rules of procedural and substantive law.

23. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance with respect to the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999; see also Case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

24. 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,* No. 53363/99 ECHR Decision on admissibility, of 31 May 2005).

25. Although the Applicant claims that his rights have been violated by erroneous determination of the facts and erroneous application of the law by the regular courts, he has not shown how the abovementioned decisions violated his constitutional rights.

26. The Court further reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings in his case cannot of itself raise an arguable claim for breach of the Constitution (see: *mutatis mutandis*, ECHR Judgment No.5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary,* Judgment of 26 July 2005).

27. The Applicant was afforded the opportunity to present his case and to challenge the interpretation of the law, which he considers is wrong, before the Municipal Court in Prishtina, the Court of Appeal of Kosovo in Prishtina and the Supreme Court of Kosovo, in the regular court proceedings.

28. The Court, after having reviewed the proceedings in their entirety, did not find that the relevant proceedings before the regular courts have been unfair or arbitrary (*mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR. Decision of 30 June 2009).

29. The Court considers that admissibility requirements have not been met. The Applicant has failed to point out and substantiate that his constitutional rights and freedoms have been violated by the challenged decision.

30. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 8 July 2015, 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 paragraph 4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI11/15, Applicant Ymer Bardhi - Constitutional review of Decision AC-I.-14-0233, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 1 December 2014

KI11/15, Resolution on Inadmissibility of 31 August 2015, published on 11 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, equality before the law, the right to fair and impartial trial, interim measure, the process of privatization*

The Appellate Panel of the Special Chamber approved the appeal of the Privatization Agency of Kosovo for non-alienation of a social property and repealed the provisional measures with respect to that property. The Applicant had ownership claims to the property in question. The Applicant filed a complaint with the Constitutional Court, claiming that the decision of the Special Chamber was contrary to all legal norms and rules.

The Constitutional Court considered that the Applicant has not substantiated his allegation on constitutional grounds and he did not provide evidence, indicating how and why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision on rejection of the request for imposition of the interim measure. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible in accordance with Article 48 of the Law and Rule 36 (2) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI11/15
Applicant
Ymer Bardhi
Constitutional Review of Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, AC-I.-14-0233, of 1 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Ymer Bardhi with residence in Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Appellate Panel), AC-I.-14-0233, of 1 December 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision. The Applicant does not mention, specifically, what Articles of the Constitution 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), and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 4 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 March 2015, the President of the Court by Decision no. GJR. KI11/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision no. KSH. KI11/15, the President of the Court appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

7. On 28 April 2015, the Court informed the Applicant about the registration of Referral and sent a copy of the Referral to the Appellate Panel.

8. On 1 July 2015, by Decision GJR. KI11/15, the President appointed Judge Arta Rama-Hajrizi as a member to the Review Panel, replacing Judge Enver Hasani, whose mandate in the Constitutional Court ended on 26 June 2015.

9. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court to declare the Referral inadmissible.

Summary of Facts

10. According to the Applicant's allegations, the immovable property owned by his predecessors, was unlawfully taken in 1946 and was allocated to other persons. On an unspecified date, the abovementioned persons sold the disputed land to the socially owned enterprise „BUJQËSIA"from Peja.

11. In September 2013, the Applicant initiated proceedings before the Trial Panel of the SCSC in which he requested the annulment of the above-mentioned sale-purchase agreement, by which the socially owned enterprise „BUJQËSIA" from Peja, now under the administration of the Privatization Agency of Kosovo (hereinafter: PAK) has become the owner of the disputed immovable property. In addition, the Applicant also requested from the Trial Panel of the SCSC to impose Interim Measure to stop the alienation of the mentioned immovable property under the PAK administration.

12. On 22 July 2014, the Trial Panel of the SCSC [Decision C-III-13-0462] approves the Applicant's request for Interim Measure to stop the

alienation of the mentioned immovable property under the PAK administration, pending a final decision on the merits of the case.

13. On 31 July 2014, the PAK filed an appeal against the decision of the Trial panel of the SCSC with the Appellate Panel of the SCSC, alleging that the Applicant since 1952 and onwards has never been legal titleholder of the disputed immovable property. Under Article 268 of the Law on Associated Labor, the return of property may be requested within five years from the date of notification, and no later than 10 years.

14. On 25 November 2014, the Appellate Panel of the SCSC, [Decision AC-I.-14-0233] approved the PAK appeal and annulled Decision [C-III.-13-0462] of the Trial Panel of the SCSC and rejects the Applicant's request for the imposition of Interim Measure. In the reasoning of its Decision, the Appellate Panel of the SCSC, among other things, stated:

> *„The Applicant's allegation to keep/use the property in good faith is not a legal argument for an interim measure.*
> *For the foregoing reasons, the Appellate Panel annuls the challenged decision and rejects the Applicant's request for interim measure as ill-founded.*
>
> *This decision has no bearing on the final solution of this request, on the contrary, the Applicants are encouraged to offer evidence in a proceedings in order to substantiate their claim over the property.“*

Relevant legal provisions

Law on Associated Labor PR no. 528of 25 November 1976
Article 268.

> *If the immovable property became a social enterprise without any legal basis, its reinstatement can be requested within five years from the date of becoming aware, but not later than ten years.*
>
> *[...].*

Applicant's allegations

15. The Applicant considers that the Appellate Panel of the SCSC, by its Decision AC-I.-14-0233-A0001, of 1 December 2014, annulled the Decision of the Trial Panel of the SCSC with ungrounded reasoning.

16. The Applicant further states:

> *„That the Appellate Panel of the SPECIAL CHAMBER of the Supreme Court of the Republic of Kosovo in Prishtina, by decision, number and date as stated above, is contrary to every legal norm and rule consequently anticipated the final decision of the claimants' claim."*

17. The Applicant requests the Court that:

> *„Decision AC-I-14-0233-A0001, of the Appellate Panel of the SPECIAL CHAMBER of the Supreme Court of Kosovo in Prishtina, of 01.12.2014, is annulled while Decision C-III-13-0462, of the Specialized Panel of the SPECIAL CHAMBER of the Supreme Court of Kosovo in Prishtina, of 20 July 2014, regarding the* ***IMPOSITION OF INTERIM SECURITY MEASURE****, at the expense of the disputed real property registered in the certificate no. 01-30-13, Cadastral Zone LUTOGLAVA, Cadastral Municipality of Peja,* ***is upheld until the decision on merits of claim - on 17 September 2013."***

Admissibility of the Referral

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

19. In this regard, the Court refers to Article 113 (1) and (7) of the Constitution, which provides:

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

20. The Court notes that the Applicant's Referral is reviewed regarding the violation of the rights and freedoms guaranteed by the Constitution and the ECHR. However, the Court notes that the Applicant in his Referral, in addition to the legal basis for submission of Referral, did not specifically mention what rights and freedoms guaranteed by the

Constitution have been violated by the challenged decision, 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".*

21. In addition, the Court takes into account Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which provide:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2) The Court shall declare 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. "*

22. The Court notes that the Applicant states that the decision of the Appellate Panel of the SCSC is contrary to any legal norms and rules.

23. In this regard, the Court considers that the Appellate Panel of the SCSC in its decision provided valid reasons for its findings (see: paragraph 12). Therefore, the Appellate Panel of the SCSC reasoned its decisions and substantiated the Applicant's allegation regarding the rejection of the request for Interim Measure, reasoning that *"The Applicant's allegation that they use this property in good faith is not a legal argument for issuing a preliminary injunction."*

24. Furthermore, the Appellate Panel further stated that, *"This decision has no bearing whatsoever on the final settlement of this claim; on the contrary, the claimants are encouraged to offer evidence in the proceedings in order to prove their claims over the property."*

25. The Court reiterates that it is not to act as a court of fourth instance, with respect to the decisions rendered by the SCSC. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken, (see: case *Edwards v. United Kingdom,* No. 13071/87, the Report of the European Commission of Human Rights, of 10 July 1991).

26. In the present case, the Court does not find that the relevant proceedings before the SCSC 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).

27. Therefore, the Court considers that the Applicant has not substantiated his allegation on constitutional grounds and he did not provide evidence, indicating how and why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision on rejection of the request for imposition of the interim measure.

28. The Court concludes that the Applicant's Referral is manifestly ill-founded in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 31 August 2015, 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**
Snezhana Botusharova	Arta Rama-Hajrizi

KI14/15, Applicant Milić Krstić - Constitutional review of Judgment GSK-KPA-A 284/13, of the Supreme Court of Kosovo - Appellate Panel of Kosovo Property Agency, of 2 December 2014

KI14 / 15, Resolution on Inadmissibility of 31 August 2015, published on 11 September 2015

Keywords: Individual referral, manifestly ill-founded request, right to fair and impartial trial, protection of property

The Supreme Court rejected the Applicant's appeal regarding the ownership over a business premise as ungrounded. The Applicant filed complaint with the Constitutional Court, claiming that the Supreme Court violated the substantive law and erroneously determined the factual situation for confirmation of the property right.

The Constitutional Court considered that the mere fact that in the legal proceedings for the confirmation of a property right, the Applicant has not been successful, is not sufficient to establish a violation of his rights as guaranteed by Article 46 of the Constitution, The Applicant must demonstrate that as a result of the court decision he has been arbitrarily and unjustly deprived of his property. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Rule 36 (1) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI14/15
Applicant
Milić Krstić
Request for Constitutional Review of Judgment of the Supreme Court of Kosovo – Appellate Panel of Kosovo Property Agency, GSK-KPA-A-284/13, of 2 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Milić Krstić, with residence in Sremska Mitrovica, Republic of Serbia (hereinafter: the Applicant), who is represented by a lawyer Mr. Goran Belić.

Challenged Decision

2. The Applicant challenges Judgment of the Supreme Court of Kosovo – Appellate Panel of the Kosovo Property Agency, GSK-KPA-A-284/13 (hereinafter: the KPA Appellate Panel), of 2 December 2014.

Subject Matter

3. The subject matter is the constitutional review of the Judgment [GSK-KPA-A-284/13] of the KPA Appellate Panel, of 2 December 2014, which allegedly has violated the Applicant's right under Article 46 [Protection of Property] of the Constitution of Kosovo.

Legal Basis

4. Article 113.7 of the Constitution, Article 49 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 Constitutional Court

5. On 11 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 March 2015, the President of the Court, by Decision No. GJR. KI14/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI14/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 27 March 2015, the Court notified the Applicant and the KPA Appellate Panel of the registration of the Referral.

8. On 26 June 2015, the President of the Court by Decision no. KSH. KI14/15 appointed Judge Ivan Čukalović as Judge Rapporteur instead of Judge Arta Rama – Hajrizi. By the same Decision, the President appointed Judge Arta Rama – Hajrizi as member of the Review Panel instead of Judge Kadri Kryeziu, whose mandate at the Constitutional Court ended on 26 June 2015.

9. On 6 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

10. According to the Applicant's allegation, on 8 September 1998, the administrative authority of the Municipality of Istok rendered a decision allocating to the Applicant the use of land parcel no. 1800/2, where he later constructed the business premise, which is the subject of this constitutional complaint.

11. On 6 July 2007, the Applicant submitted a claim to the Kosovo Property Agency (hereinafter: the KPA), by which he requested the confirmation of the property rights over the business premises located at the Varosh Street, Municipality of Istok, in parcel no. 1800/2, with a total surface area of 48 m2.

12. On 18 April 2013, the Kosovo Property Claims Commission (hereinafter: the KPCC) rendered its Decision [KPCC/D/C/200/2013],

which rejected the Applicant's property claim as ungrounded. In the conclusion of the decision is stated:

> *"[...] the Executive Secretariat of the KPCC did not verify the authenticity of the documents submitted by the claimant. The Commission finds that the claimant did not prove any property right over the claimed property."*

13. On 6 September 2013, the Applicant filed an appeal with the KPA Appellate Panel against the Decision [KPCC/D/C/200/2013] of the KPCC, of 18 April 2013.

14. On 2 December 2014, the KPA Appellate Panel rendered Judgment [GSK-KPA-A-284/13] by which it rejected the Applicant's appeal as ungrounded and upheld in entirety the KPCC Decision [KPCC/D/C/200/2013] of 18 April 2013.

15. In the conclusion of the Decision of the KPA Appellate Panel of 2 December 2014 it stated as follows:

> *"[...] the appellant [Applicant] did not submit any decision on allocation or evidence that confirms the right of use or the property right over the business premises despite the fact that the Commission requested clarifications and additional information, therefore the KPA Appellate Panel finds that the KPCC rendered the correct decision, based on the complete and correct proceedings. The KPA Appellate Panel finds that the substantive law had not been violated or that the facts had not been determined completely, therefore the appeal is ungrounded".*

Applicant's Allegations

16. The Applicant alleges in the Referral that the courts violated the substantive law and erroneously determined the factual situation regarding his request for confirmation of the property right.

17. The Applicant addresses the Court with the request:

> *"[...] that the Constitutional Court of Kosovo holds that in the proceedings before the KPA Appellate Panel of the Supreme Court of Kosovo in case no. GSK-KPA-A-284/13 the right of the Applicant pursuant to Article 46 [Protection of Property] of the Constitution has been violated and that it also determines the manner how to legally satisfy the Applicant, respectively order the Supreme Court of Kosovo –Appellate Panel of KPA, to render a new decision pertaining to the appeal."*

Admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court needs to first 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.

19. In this respect, Article 113, para. 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."*

20. The Article 48 of the Law, states that:

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

21. In this case, the Court refers to Rule36 (1) (d)of the Rules of Procedure, which provides:

> *(1) "The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded."*

22. The Court notes that the Applicant's Referral is exclusively based on an allegation of a violation of Article 46 [Protection of Property] of the Constitution. This article provides that:

> *"1. The right to own property is guaranteed.*
>
> *2. Use of property is regulated by law in accordance with the public interest.*
>
> *3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the*

provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

5. Intellectual property is protected by law."

23. The Court further notes that, apart from his allegation of a violation of Article 46 of the Constitution, the Applicant did not justify his allegation before the Court by any other argument.

24. The Court notes that the right to property under Article 46 of the Constitution, is subject to protection in the constitutional system of Kosovo and its content corresponds with the right to the free enjoyment of property under Article 1 of Protocol no. 1 of the European Convention of Human Rights (hereinafter ECHR). This right is protected by the Constitution in such a way that the regulation, limitation or deprivation of the use of property must be based on law.

25. In the Court's opinion, the mere fact that in the legal proceedings for the confirmation of a property right, the Applicant has not been successful, is not sufficient to establish a violation of his rights as guaranteed by Article 46 of the Constitution, The Applicant must demonstrate that as a result of the court decision he has been arbitrarily and unjustly deprived of his property (See case *mutatis mutandis Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005).

26. 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 regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain,* ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

27. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, as the Applicant has not substantiated that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.

28. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) (d) of the Rules of Procedure, in the session held on 31 August 2015, 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 paragraph 4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Arta Rama-Hajrizi

KI32/15, Applicant Shemdi Nishevci - Constitutional Review of Judgment Rev. no. 188/2014 of the Supreme Court, of 17 November 2015

KI32/15, Resolution on Inadmissibility of 21 August 2015, published on 11 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, equality before the law, the right to fair and impartial trial, right to work and exercise profession*

The Supreme Court rejected as ungrounded the request for revision submitted by the Applicant against the decisions of the lower instance courts regarding the termination of the employment contract. The Applicant filed complaint with the Constitutional Court alleging violation of his constitutional rights because the regular courts have not correctly examined the material evidence.

The Constitutional Court held that the reasoning of the Judgment of the Supreme Court is extensive and comprehensive, and contains detailed reasoning on why the revision should be rejected as ungrounded and the judgments of the lower instance court had to be upheld. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI32/15
Applicant
Shemdi Nishevci
Constitutional Review of Judgment Rev. no. 188/2014 of the Supreme Court, of 17 November 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge.

Applicant

1. The Applicant is Mr. Shemdi Nishevci, from Podujeva, who is represented by Mr. Ndue Thaçi, a lawyer.

Challenged Decision

2. The Applicant challenges Judgment Rev. no. 188/2014 of the Supreme Court of the Republic of Kosovo, of 17 November 2015 (hereinafter, the Supreme Court), which upheld the decisions of the lower instance courts, according to which there was no legal basis for the annulment of the employer's decision. The challenged Judgment was served on the Applicant on 15 January 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's rights to equality before the law, to fair and impartial trial and to work and exercise profession, as guaranteed by Articles 3 and 24.2, Article 31, Article 49 of the Constitution and by Article 6 of the European Convention of Human Rights (hereinafter, ECHR) .

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 12 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 21 April 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Bekim Sejdiu.

7. On 13 May 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 1 July 2015, the President appointed herself as a member to the Review Panel replacing Judge Kadri Kryeziu whose mandate as Constitutional Judge ended on 26 June 2015.

9. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court to declare the Referral as inadmissible.

Summary of Facts

10. On 1 February 2009, the Applicant concluded an employment contract (no. 2188/0) with the Kosovo Energy Corporation (hereinafter, the Employer) for the job position of Officer in charge of network Supervisor at the Prishtina District.

11. On 6 September 2010, the Employer (Notice no. 118) informed the Applicant about the termination of his employment contract, due to serious violation of his work duties.

12. The Applicant filed a complaint with the manager of the Prishtina District, requesting reconsideration of the notice on the termination of the employment contract.

13. On 13 September 2010, the Employer (Decision no. 451) rejected the Applicant's complaint.

14. On 19 November 2010, the Applicant submitted a claim to the Municipal Court in Prishtina, against the Employer's decision on rejecting the Applicant's complaint.

15. On 6 November 2012, the Municipal Court in Prishtina (Judgment, C. no. 2046/2010) rejected as ungrounded the Applicant's claim, reasoning that *"this action of the Claimant, even though it did not occur in the workplace but occurred in his house, it represents a serious violation of the work duties"*.

16. On 6 November 2012, the Applicant filed appeal with the Court of Appeal, due to *"the serious violation of the provisions of the contested procedure, incomplete and erroneous ascertainment of the factual situation and due to the erroneous application of the substantive law"*.

17. On 3 January 2014, the Court of Appeal (Judgment Ac. no. 1572/2013) rejected as ungrounded the Applicant's appeal and upheld the Judgment (C. no. 2046/10) of the Municipal Court, reasoning, inter alia that *"when an employee commits theft, destruction, damage or unauthorised use of the employer's assets, the employment contract of the employee shall be terminated"*.

18. The Applicant filed an appeal with the Supreme Court, due to *"essential violations of the provisions of the contested proceeding and the erroneous application of the substantive law"*.

19. On 17 November 2014, the Supreme Court (Judgment Rev. no. 188/2014) rejected as ungrounded the revision.

20. The Supreme Court found that *"The employment contract of the Claimant was terminated after the preliminary procedure was conducted wherein the Respondent had previously notified the Claimant in writing on the procedure being conducted against him, due to the serious violation of the work duties, therefore the allegations in the revision for essential violations of the provisions of the contested procedure have been rejected as ungrounded."*

21. In addition, the Supreme Court also concluded that *"the challenged Judgment does not contain flaws which would have contested the legality of the Judgment"*.

Applicant's Allegations

22. The Applicant claims that the challenged decision violated his rights guaranteed by Articles 3 and 24.2 [Equality Before the Law], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] of the Constitution and the rights guaranteed by Article 6 of the European Convention of Human Rights (hereinafter: ECHR).

23. The Applicant alleges that the challenged decision violated his constitutional rights, because the regular courts have not correctly examined the material evidence.

Admissibility of the Referral

24. The Court first examines whether the Applicant's Referral fulfills the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rule of Procedure.

25. 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".*

26. In addition, Rule 36 (1) (d) of the Rules of Procedure of the Constitutional Court, provides:

> *(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*

27. Furthermore, Rule 36 (2) of the Rules of Procedure provides:

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

28. The Court notes that the Applicant claims that the challenged decision violated his rights to equality before the law, the right to fair and impartial trial and the right to work and exercise profession.

29. However, the Court considers that the Applicant merely stated that there were violations of his constitutional rights, without clearly explaining how and why the facts he presented were a violation of these constitutional rights he referred to.

30. The Court reiterates that in order to have a case related to a constitutional violation, the Applicant must show and substantiate that the proceedings before the regular courts, including before the Supreme Court, viewed in their entirety, have not been conducted in a correct manner and in accordance with the requirements of a fair trial, or that other violations of the constitutional rights have been committed by the Supreme Court during the proceedings.

31. The Court considers that the reasoning of the Judgment of the Supreme Court is extensive and comprehensive, and contains detailed reasoning on why the revision should be rejected as ungrounded and the judgments of the lower instance court had to be upheld, namely because the facts were correctly established, no essential violations of the provisions of the contested proceeding and erroneous application of the substantive law were found.

32. Moreover, the Court considers that the Applicant has not substantiated and proved his claim on a constitutional basis; on the contrary, he confined the discussion to the violation of the provisions of the contested proceedings and erroneous application of the substantive law, which are of legality nature and fall under the jurisdiction of the regular courts.

33. In this regard, the Court is not supposed to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *Garcia Ruiz us. Spain* [GC], No. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-1).

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

35. In sum, the Court in the present case cannot consider that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary. (See, *mutatis mutandis, Shub vs. Lithuania*, Decision of ECHR on the admissibility of application no. 17064/06, 30 June 2009).

36. For the foregoing reasons, the Court concludes that the Applicant's Referral must to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 20 and 48 of the Law and Rule 36 (1) d) and (2) d) of the Rules of Procedure, on 21 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI15/15, Applicant Hysni Hoxha President of the Procurement Review Body – Request for legal interpretation of Article 100 of the Law on Public Procurement in the Republic of Kosovo

KI15 / 15, Resolution on Inadmissibility of 7 July 2015, published on 15 September 2015

Keywords: *Individual Referral, inadmissible referral, ratione materiae*

The Applicant requested the Court to interpret the requirements provided in the Law on Public Procurement and to decide whether the immunity of members appointed to the Procurement Review Body is of the same level that was guaranteed to the judges in the Kosovo judicial system.

The Constitutional Court noted that it is quite clear that it interprets the Constitution, and assesses the compliance of laws with the Constitution, but it is not authorized by any constitutional provision, and in any circumstances, to make the interpretation of specific provisions of the law as a unique legal act. The Referral was declared inadmissible *ratione materia*, in accordance with Article 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 36 (3) (e) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI15/15
Applicant
Hysni Hoxha,
President of the Procurement Review Body
Request for legal interpretation of Article 100 of the Law on Public Procurement in the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Hysni Hoxha, President of the Procurement Review Body (hereinafter the "PRB"). The Applicant did not clarify whether he files the Referral as an individual or on behalf of the PRB, however, in the Referral he emphasized his official function and stamped the Referral with the official stamp of the PRB.

Challenged Decision

2. The Applicant does not challenge any decision of public authorities.

Subject Matter

3. The subject matter is the request for interpretation of Article 100 of the Law on Public Procurement in the Republic of Kosovo (Law No. 04/L-042), which provides the requirements and professional qualifications for the candidates to be appointed as PRB members.

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 Constitutional Court

5. On 13 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter "Court").

6. On 12 March 2015 the President of the Court, by Decision no. GJR. KI15/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 1 July 2015 the President of the Court appointed Judge Ivan Cukalovic as a member of the review panel replacing Judge Kadri Kryeziu, whose mandate as a judge of the Constitutional Court expired on 26 June 2015.

8. On 1 April, 2015 the Constitutional Court informed the Applicant about the registration of the Referral, and requested him to fill in the referral form of the Court in the manner prescribed by Rule 29 of the Rules of Procedure of the Court.

9. On 16 April 2015, the Court received from the Applicant the completed referral form.

10. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court that the Referral should be resolved to be inadmissible.

Summary of Facts

11. On 19 March 2014, the Assembly of Kosovo appointed the Applicant and 4 (four) other members to the PRB for a term of 5 (five) years. The Assembly also appointed the Applicant as President of the PRB.

12. The appointment of the President and the members of the PRB was made in accordance with the procedures set out in Article 100.4 of the Law on Public Procurement in Kosovo.

13. Article 100.5 subparagraph 5.4 of the same Law provides that one of crucial requirements for the candidates to be appointed as a member of the PRB is as follows:

"*5.4. meet eligibility requirements for appointment as a judge*;"

14. The Applicant asks this Court to interpret requirements referred to in this Law, and to decide whether the immunity of members appointed to the PRB is of the same level as that guaranteed to the judges in the judicial system of Kosovo.

Applicant's Allegations

15. The Applicant does not specify any article of the Constitution that may be violated or to be interpreted, but he requests from the Constitutional Court to interpret the legal issue he has raised and as set forth in paragraph 14.

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, 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 48 of the Law on the Constitutional Court, which provides:

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

19. The Court takes into account also the Rule 36 (3) (e) of the Rules of Procedure, which provides:

> *"A referral may* also *be deemed inadmissible in any of the following cases:*
>
> > *e) the Referral is incompatible ratione materiae with the Constitution;"*

20. Regarding this request, the Court notes that by Article 4.6 of the Constitution of Kosovo provides that *"The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution",* whereas Article 112.1 of the Constitution provides that *"The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution."*

21. As stated above, the Constitutional Court interprets the Constitution, and assesses the compliance of laws with the Constitution, but it is not authorized by any constitutional provision, and in any circumstances, to make the interpretation of specific provisions of the law as a unique legal act.

22. Moreover, the Court points out that in any of the items of Article 113 (Jurisdiction and Authorized Parties) of the Constitution, no authorized party has the right to raise the issues referred to in this case, simply because those issues are outside of the jurisdiction of the Court.

23. It is evident that in order to decide on a Referral filed before it, the Court should have material jurisdiction and it is its duty to take care regarding this jurisdiction during the review process of the Referral. In the same way the European Court of Human Rights, in the case X v. Germany reasoned:

    "under Article 25, § 1 of the Convention, it is only the alleged violation of one of the rights and freedoms set out in the Convention that can be the subject of an application presented by a person, non-governmental organization or group of individuals ." (See, *X v. Germany* application no. 7462/76).

24. In the present case, the Court does not have material jurisdiction to make a decision on the question asked of it, and the Referral is incompatible *ratione materie* with the Constitution (See, Resolution on Inadmissibility of the Court in Case KI115/12, the Applicant *Fadil Salihu,* of 25 January 2013), Therefore, it 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 (3) (e) of the Rules of Procedure, on 7 July 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI75/15, Applicant Hatixhe Cana-Kurti - Request for constitutional review of Judgment AC-I-14-0218-A0001-A0004, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 14 May 2015

KI75/15, Resolution on Inadmissibility of 21 July 2015, published on 15 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, discrimination, interim measure, equality before the law, the right to fair and impartial trial, process of privatization*

The Special Chamber of the Supreme Court approved the appeal of the Privatization Agency of Kosovo to exclude the Applicant from the list of employees who benefit from 20% share of the privatization of a socially owned enterprise. The Applicant appealed to the Constitutional Court, alleging violation of her right to benefit from the privatization of the socially owned enterprise. The Applicant also requested the imposition of interim measure.

The Constitutional Court considered that the explanation given by the Special Chamber is clear and legally grounded and that the proceedings were not in any way unfair or arbitrary. The Court also rejected the request for the imposition of interim measure. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rules 36 (2) (b) and 55 (5) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI75/15
Applicant
Hatixhe Cana-Kurti
Request for constitutional review of Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-14-0218-A0001-A0004,
of 14 May 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Ms. Hatixhe Cana-Kurti with residence in village Livoq i Ulet, Municipality of Gjilan (hereinafter: the Applicant).

Challenged Decision

2. The Applicant requests the constitutional review of Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel), of 14 May 2015.

Subject Matter

3. The subject matter is the constitutional review of Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel of 14 May 2015, which, allegedly, has violated the Applicant's rights and freedoms guaranteed by the Constitution under Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

4. At the same time, the Applicant requests the Court to impose an interim measure, which would ban further distribution of the 20% of the proceeds of the sale to all workers who are entitled to this right to proceeds from the privatization of the Socially Owned Enterprise Agrokultura (hereinafter: the SOE Agrokultura) until the Court decides on the merits of the Referral.

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 Constitutional Court

6. On 15 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 29 June 2015, the President of the Court, by Decision No. GJR. KI75/15 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI75/15 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.

8. On 1 July 2015, the Court informed the Applicant and the Appellate Panel about the registration of the Referral.

9. On 21 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. The Applicant was employed with the Socially-Owned Enterprise (hereinafter: SOE) Agrokultura from 15 May 1985 until 31 March 1995.

11. On 26 March 2006, the SOE Agrokultura was privatized.

12. On 10 December 2010, the Privatization Agency of Kosovo (hereinafter: PAK) announced the final list of employees who are entitled to share in 20% of the proceeds from the privatization of the SOE Agrokultura, in which the Applicant was not included. In the reasoning of the decision is stated that *"all the other applicants who*

are not satisfied with the decision of the Privatization Agency shall have the right of appeal to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) until 31 December 2010."

13. On an unspecified date, the Applicant filed an appeal with the Special Chamber against the final list, which was published on 10 December 2010 by the Privatization Agency of Kosovo. In the appeal, the Applicant, in addition to the allegations *"that in 1995 her employment relationship with SOE Agrokultura was terminated due to discrimination against [her] by the then regime and management of the company",* enclosed a certificate issued by the director of the enterprise as evidence of her former employment status, which she had enjoyed during the period from 15 May 1985 until 31 March 1995.

14. On 10 July 2014, the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel) rendered its Judgment [SCEL- 10-0038] by which it approved the Applicant's appeal and ordered the Special Chamber to include her in the final list with other workers who had acquired the legitimate right to a share of 20% of the proceeds from the privatization of SOE Agrokultura.

15. On an unspecified date, PAK filed an appeal against this Judgment [SCEL- 10-0038] of the Specialized Panel, because PAK had not had an opportunity to respond to the Applicant's claims before the Specialized Panel.

16. In its appeal, the Privatization Agency stated: *"The Appellant (Applicant) did not submit the relevant fact, based on which would be determined the justification of allegations that she was not equal to the proceedings, and the reasoning for the application of direct or indirect discrimination in accordance with Article 8.1 of the Law Against Discrimination. The Appellant did not provide the facts of discrimination, and the respondent (Privatization Agency) was not able to present its arguments to respond to allegations of discrimination on which the Appellant [Applicant] based her appeal. "*

17. On 14 May 2015 the Appellate Panel having considered and assessed all the allegations and evidence in the case file submitted by the parties to the proceedings, found that the appeal of the Privatization Agency was grounded, therefore by Judgment [AC-I-14-0218-A0001 -A0004] modified the Judgment [SCEL- 10-0038] of the Specialized Panel and rejected the Applicant's claim as ungrounded.

18. In the reasoning of the Judgment [AC-I-14-0218-A0001-A0004] the Appellate Panel stated: *"The claimant C-0002 Hatixhe Cana-Kurti had closed her work booklet in 1995. There is no decision on her employment prior to this period, there is no decision on dismissal from work and she did not provide any evidence indicating that she was working until the privatization of the SOE, or that she was on the waiting list, as she stated in the appeal before the Special Chamber. For these reasons, the Applicant does not meet the criteria stipulated in Article 10.4 of the UNMIK Regulation 2003/13, to be included in the final list with a legitimate right to 20%. "*

Applicant's allegations

19. The Applicant believes that the Appellate Panel by its Judgment committed a violation of the principle of equality before the law in relation to the other parties.

20. The Applicant addresses the Court with the request: *"I want to be included in the final list of employees with legitimate right to 20 % share of proceeds from privatization of the SOE Agrokultura from Gjilan."*

Admissibility of the Referral

21. In order to be able to adjudicate upon the Applicant's Referral, the Court needs first to examine whether the she 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. In addition, Article 48 of the Law, requires:

    "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 this case, the Court refers to Rule 36 (1) (d) of the Rules of Procedure, which provides:

"(1) The Court may consider a referral if:

[...]

d) the referral is prima facie justified or not manifestly ill-founded."

25. In the present case, the Court notes that the Applicant challenges the Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel, which has allegedly violated her rights and freedoms guaranteed by Article 24 [Equality Before the Law] of the Constitution.

26. In this regard, the Court notes that the Applicant did not explain how and why the Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel violated her rights guaranteed by the Constitution.

27. Based on the Applicant's Referral, the Court notes the Applicant tried to justify the alleged violations of Article 24 [Equality Before the Law] of the Constitution exclusively with the statement, *"I consider that the Appellate Panel by its Judgment violated the principle of equality before the law in relation to other parties."*

28. The Court notes that the Appellate Panel based its decision on UNMIK Regulation no. 2003/13 ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY OWNED IMMOVABLE PROPERTY of 9 May 2003, which provides, *inter alia*, that:

„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. "

29. Furthermore, the Court notes that, based on this law, the Appellate Panel concluded that the Applicant had not been employed with the SOE Agrokultura during the required period of time to become eligible to benefit from the 20% share in the proceeds (see para. 16 above).

30. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See:

mutatis mutandis, *Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999. See also case no. KI70/11, *Applicants: Faik Hima, Magbule Hima and Bestar Hima* Resolution on Inadmissibility of 16 December 2011).

31. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the provisions of Article 24 of the Constitution (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary,* No. 5503/02, ECHR, Judgment of 26 July 2005).

32. Moreover, the Court notes that the Appellate Panel rendered its Judgment [AC-I-14-0218-A0001-A0004] of 14 May 2015 following detailed consideration and assessment of all the allegations and the evidence from the case file as submitted by both parties to the appeal procedure.

33. Accordingly, the Court holds that the explanation given by the Appellate Panel in Judgment [AC-I-14-0218-A0001-A0004] is clear and legally grounded and that the proceedings before the Appellate Panel were not in any way unfair or arbitrary (See, *mutatis mutandis, Shub v. Lithuania,* no. 17064/06, ECHR Decision of 30 June 2009).

34. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant did not submit any evidence indicating that the challenged decision in any way violates her rights and freedoms guaranteed by Article 24 of the Constitution.

35. Therefore, the Court concludes that the Applicant has not substantiated her claim and the Referral is to be rejected as inadmissible because as manifestly ill-founded, pursuant to Rule 36 (1) (d) of the Rules of Procedure.

Request for Interim Measure

36. As it was stated in paragraph 4, the Applicant also requests from the Court to impose an interim measure, by which would be banned further distribution of the 20 % of the proceeds to all employees who had acquired this right from the privatization of the SOE Agrokultura, until the Court decides on the merits of this Referral.

37. In order for the Court to impose an Interim Measure, in accordance with Rule 55 (4 and 5) of the Rules of Procedure, the Court must determine whether or not:

"(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."

38. As stated above, the Applicant's Referral is inadmissible, therefore, the request for an interim measure must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (2) (b) and 55 (5) of the Rules of Procedure, in the session held on 21 July 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY this Decision to the Parties;

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

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI98/14, Applicant Rasim Rashica - Constitutional review of Decision PPC. no. 39/2011, of the Supreme Court, of 5 August 2011

KI98/14, Resolution on Inadmissibility of 24 August 2015, published on 17 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, right to work and exercise profession, judicial protection of rights, early retirement*

The Supreme Court approved the request for revision of the Kosovo Energy Corporation regarding the legality of the early retirement of the Applicant. The Applicant appealed to the Constitutional Court, alleging a violation of the right to fair trial and judicial protection of rights.

The Constitutional Court considered that the Supreme Court reasoned its decisions and substantiated every allegation of the Applicant in respect of the rejection of his proposal, and that the Applicant did not substantiate his allegation on constitutional grounds and did not provide evidence, indicating how and why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI98/14
Applicant
Rasim Rashica
Constitutional review of Decision PPC. no. 39/2011, of the Supreme Court, of 5 August 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Rasim Rashica from village Bresje, Municipality of Fushe Kosove, represented by the lawyer, Mrs. Vahide Braha from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision [PPC. no. 39/2011] of the Supreme Court, of 5 August 2011, by which the Supreme Court rejected the Applicant's proposal for repetition of procedure as ungrounded and upheld the revision of the Supreme Court of Kosovo.

3. This decision was served on the Applicant on13 March 2014.

Subject Matter

4. The subject matter is the constitutional review of the challenged decision, which has agedly violated Article24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo and that there has been a substantial violation of the Law on Contested Procedure and the Law on Obligational Relationships of Kosovo.

Legal Basis

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

Proceedings before the Constitutional Court

6. On 12 June 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 4 July 2014, the President of the Court by Decision GJR. KI98/14, appointed Judge Altay Suroy as Judge Rapporteur and by Decision KSH. KI98/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Snezhana Botusharova and Ivan Čukalović.

8. On 23 January 2015, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the proceedings of constitutional review of the Decision of the Supreme Court of Kosovo, has been initiated. Through this notification, the Constitutional Court requested from the Applicant and the Municipal Court in Prishtina to submit a copy of the date of service with the date of receipt of the Decision PPC. no. 39/2011, of the Supreme Court, of 5 August 2011. The Court also sent a copy of the Referral to the Supreme Court.

9. On 2 March 2015, the Municipal Court submitted the requested information and in the response of the Municipal Court is stated that the Applicant was served with the challenged Decision of the Supreme Court on 13 March 2014.

10. On 3 July 2015, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

11. On 23 October 2003, the Pension Fund of Kosovo Energy Corporation (hereinafter KEK) rendered a decision regarding the request for early retirement of the Applicant. Based on this decision, the Applicant was granted a request for early retirement from the KEK Pension Fund.

12. Dissatisfied with the abovementioned decision, the Applicant filed an appeal to the Dispute Resolution Committee of the KEK Pension Fund. The same committee rejected the Applicant's appeal and upheld the decision of the KEK Pension Fund.

13. On 8 January 2004, dissatisfied with the decision of the Dispute Resolution Committee of the KEK Pension Fund, the Applicant filed a claim with the Municipal Court in Prishtina.

14. On 8 June 2005, the Municipal Court in Prishtina [Decision C1. no. 4/2004] rejected the Applicant's appeal as out of time.

15. On 28 February 2007, the District Court in Prishtina [Decision Ac. no. 38/2006] approved the appeal of the Applicant and annulled the Decision of the Municipal Court and remanded the same to the Municipal Court for retrial.

16. On 23 November 2007, the Municipal Court in Prishtina after the repeated procedure [Judgment C1 no. 102/2007] approved the Applicant’s claim and annulled as unlawful the Decision of KEK Pension Fund, which approved the Applicant’s request for early retirement and obliged KEK to reinstate the Applicant to his previous working position.

17. Against this Judgment, KEK filed an appeal with the District Court in Prishtina.

18. On 14 October 2008, the District Court in Prishtina [Judgment Ac. no. 392/2008] rejected as ungrounded KEK appeal and upheld the Judgment of the Municipal Court.

19. Against this Judgment, KEK submitted a request for revision to the Supreme Court. On 3 March 2010, the Supreme Court of Kosovo [Judgment Rev. I. no. 40/2009] approved KEK revision and modified the Judgment [C1 no. 102/2007] of the Municipal Court and the Judgment [Ac. no. 392/2008] of the District Court, so that it rejected the Applicant’s claim as ungrounded.

20. Against the Judgment of the Supreme Court, the Applicant filed a request for repetition of the procedure. On 5 August 2011, the Supreme Court [Decision PPC. no. 39/2011] rejected as ungrounded, the Applicant's proposal for repetition of the procedure.

Applicant's allegations

21. The Applicant alleges that by the challenged decision the rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo have been violated and that there have been the substantial violations of the Law on Contested Procedure and the Law on Obligational Relationships of Kosovo.

22. The Applicant requests the Court:

> *"From this Court we request to declare invalid the Judgment Rev. no. 40/2009, of the Supreme Court, of 03.03.2010 and to reconsider the lost right, in accordance with the subject of the statement of claim (**on the right to compensation of salaries**)".*

Relevant legal provisions

UNMIK Regulation no. 2001/27

On Essential Labour Law in Kosovo

<u>Section 11</u>
Termination of a Labour Contract

> 11.1 A labour contract shall terminate:
>
> *[...]*
>
> *(b) by a written agreement between the employee and employer;*
>
> *[...].*

Admissibility of the Referral

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

24. In this respect, the Court refers to Article 113 of the Constitution, which provides:

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

[...]

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

25. In addition, 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 further takes into account Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which provide as it follows:

"(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare 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;

27. The Court notes that in the present case, the Applicant complains about the fact that the Supreme Court, deciding upon the revision, modified the first and the second instance judgments and rejected his request as ungrounded. The Supreme Court upheld the decision, by rejecting the proposal for repetition of the procedure.

28. In this regard, the Court notes that the Supreme Court in its decisions provided comprehensive reasons for its findings. Therefore, the Supreme Court reasoned its decisions and substantiated every allegation of the Applicant in respect of the rejection of his proposal.

29. Based on this, the Court considers that the explanation given in the Decision of the Supreme Court is clear and legally grounded, and that the proceedings have not been unfair or arbitrary (See *mutatis mutandis*, *Shub vs Lithuania*, no. 17064/06, ECHR decision, of 30 June 2009).

30. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI10/12 of the Applicant *Rasim Kozmaqi*, Constitutional Court, Resolution on Inadmissibility, of 25 November 2013).

31. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat vs. Hungary,* No.5503/02, ECHR, Judgment of 26 July 2005).

32. Therefore, the Court notes that the Applicant did not substantiate his allegation on constitutional grounds and did not provide evidence, indicating how and why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision.

33. Accordingly, the Court concludes that the Applicant's Referral is manifestly ill-founded in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court f Kosovo, pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 24 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. To notify this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Arta Rama-Hajrizi

KI17/15, Applicant Ibrahim Bajrami - Constitutional Review of a Request on Inclusion in Proceedings of Privatization

KI17/15, Decision to strike out the Referral of 31 August 2015, published on 17 September 2015

Keywords*: Individual referral, inadmissible referral, right to work and exercise profession, the process of privatization*

In this case, the Applicant complained to the Constitutional Court with regard to his right to benefit from a share of the privatization of SOE Ramiz Sadiku in Prishtina. The Applicant also complained of a violation of the right to work and exercise profession.

The Constitutional Court considered that the Referral is incomplete and not clearly stated and thus the Court cannot take into account the Applicant's claim without the supporting documents and material evidence. The Referral was summarily rejected and struck out from the list in accordance with Article 48 of the Law and Rules 29 (2) (h) and 35 (2) of the Rules of Procedure

DECISION
TO STRIKE OUT THE REFERRAL
in
Case No. KI17/15
Applicant
Ibrahim Bajrami
Constitutional Review of a
Request on Inclusion in Proceedings of Privatization

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

The Applicant

1. The Referral was submitted by Mr. Ibrahim Bajrami, from Grdoc, Municipality of Podujevo (hereinafter, the Applicant).

Challenged Decision

2. The Applicant does not challenge any concrete act of a public authority. He only requests to be included in the list of employees who benefit 20% of the proceeds from privatization of the CIC "Ramiz Sadiku" Prishtina (hereinafter, CIC "Ramiz Sadiku").

Subject matter

3. The subject matter has to do with the *"exclusion of the Applicant from the list of employees who benefited 20% of the proceeds from the privatization of CIC Ramiz Sadiku",* which allegedly violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 49 [Right to Work and Exercise Profession].

Legal basis

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

Proceedings before the Court

5. On 19 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 12 March 2015, 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 15 April 2015, the Court informed the Applicant about the registration of the Referral and requested him to submit to the Court the power of attorney of the representative, the last decision which he challenges, and other documents relevant to his case.

8. The Court has not received from the Applicant any decision related to the Applicant's claim, or any other decision that may be associated with the Applicant's case in general.

9. On 1 July 2015, the President by Decision KSH. KI17/15 appointed Judge Ivan Čukalović, as a member to the Review Panel replacing Judge Kadri Kryeziu whose mandate as Constitutional Judge ended on 26 June 2015.

10. On 8 July 2015, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of facts

11. The following described facts are indicated as they were stated by the Applicant.

12. The Applicant *"has been under a permanent employment relationship with the CIC "Ramiz Sadiku", assigned to the position of 'Cook'"*.

13. On 31 July 2007, he filed a claim with the Special Chamber of the Supreme Court, registered under No. SCC-07/0314, by which he requested to be included in the list of employees who received 20% of the proceeds from the privatization of CIC "Ramiz Sadiku".

14. The Applicant *"went several times to the above-mentioned Court, and ultimately they have declared that the 'Claim is premature'"*.

15. Finally, the Applicant points out that he *"addressed to the Privatization Agency of Kosovo, and the Head of the Legal Department said that: 'There is no evidence that the Claimant has been an employee of the CIC "Ramiz Sadiku"'*.

16. Meanwhile, *"the Court has never made a decision on the merits, as mentioned above, in relation to the premature claim of the Claimant – the Claimant is not included in the payroll"*.

Applicant's allegations

17. The Applicant claims that *"the provisions of Article 49 of the Constitution of the Republic of Kosovo – The Right to Work – guaranteed by the Constitution, has been violated"*.

18. Finally, the Applicant requests the Court *"to be included in the list for the payment of 20%, since the CIC "Ramiz Sadiku" in Prishtina has now been privatized"*.

Admissibility of the Referral

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

20. Thus, the Court refers to the following provisions of the Law:

    Article 22.4 [Processing Referrals]

    "4. If the referral [...] is [...] incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for supplementing the respective referral [...]".

    Article 48 [Accuracy of the Referral]

    "In his/her referral, the claimant should accurately clarify what concrete act of public authority is subject to challenge."

21. In addition, the Court refers to Rule 29 [Filing of Referrals and Replies] and 32 [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provide:

Rule 29 (2)

"The referral shall also include:

[...]

(h) the supporting documentation and information.

[...]."

Rule 32 (5)

"The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous".

22. In this regard, the Court notes that the Applicant complains, in general, on the fact that he was not included in the list of employees who have received 20% of the privatization of CIC "Ramiz Sadiku". He alleges that his rights guaranteed by Article 49 of the Constitution have been violated.

23. The Court, in accordance with Article 22.4 of the Law, requested the Applicant to submit the challenged decision and other decisions of the regular courts, and, in general, to clarify and complete the Referral.

24. However, within the prescribed time limit, the Court has not received from the Applicant any decision of the regular courts or any clarification, related to his case.

25. The Court considers that the referral is incomplete and not clearly stated and thus the Court cannot take into account the Applicant's claim without the supporting documents and material evidence.

26. Moreover, the Court emphasizes that it is not a fact-finding court and the burden of proof lies with the Applicant.

27. In fact, the Court further considers that the Applicant has not shown a *prima facie* case, in order for the Court to summarily assess the fulfillment of all procedural requirements on admissibility as required by Articles 22.4 of the Law and Rule 29 (2) (h) and 32 (5) of the Rules of Procedure.

28. Therefore, the Court finds that the Referral must be summarily rejected and as such be striken out the list.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 22.4 and 48 of the Law and the Rules 29 (2) (h), 32 (5) c) and 56 (2) of the Rules of Procedure, on 31 August 2015 unanimously

DECIDES

I. TO STRIKE OUT the Referral from the list;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECARE this Decision effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Arta Rama-Hajrizi

KI24/15, Applicant Enver Basholli - Constitutional Review of Judgment GSP-KPA-A-158/13, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency Related Matters, of 19 March 2014

KI24/15, Resolution on Inadmissibility of 31 August 2015, published on 17 September 2015

Keywords*: Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, protection of property, judicial protection of rights, res judicata*

The Appellate Panel of the Supreme Court rejected the Applicant's appeal as ungrounded and upheld the Decision of the Kosovo Property Claims Commission regarding the ownership title of a disputed house. The Applicant appealed to the Constitutional Court alleging a violation of the right to a fair trial and the right to property.

The Constitutional Court considered that the proceedings before the Property Claims Commission KPCC and before the Appellate Panel of the Supreme Court were fair and that the decisions were entirely justified and thoroughly reasoned and that the Applicant in general had a fair trial. The referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI24/15
Applicant
Enver Basholli
Constitutional Review of Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency Related Matters, GSP-KPA-A-158/13, of 19 March 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge.

Applicant

1. The Referral is submitted by Mr. Enver Basholli, from Samadrexha, Municipality of Vushtrri (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges Judgment (GSP-KPA-A-158/13, of 19 March 2014) of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency Related Matters (hereinafter, the Appellate Panel), which was served on him on 3 November 2014.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 31 [Right to Fair and Impartial Trial], Article 6 of the European Convention of Human Rights (hereinafter, ECHR) and Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 3 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 21 April 2015, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Bekim Sejdiu.

7. On 12 May 2015, the Court informed the Applicant about the registration of Referral and sent a copy of the Referral to the Appellate Panel and to the Kosovo Property Agency (hereinafter, the KPA).

8. On 1 July 2015, the President appointed herself as a member to the Review Panel replacing Judge Kadri Kryeziu whose mandate as Constitutional Judge ended on 26 June 2015.

9. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court to declare the Referral as inadmissible.

Summary of Facts

10. An apartment in Pristina, owned by the SOE "Elektrokosova", has been occupied since 1986 by a worker (hereinafter, the first worker) of the SOE "Elektrokosova".

11. On 23 November 1990, the first worker's employment relationship with the SOE "Elektrokosova" was terminated and, consequently, the apartment was also vacated.

12. On 28 November 1993, the SOE "Elektrokosova" allocated the apartment for use to another worker (hereinafter, the second worker).

13. On 18 March 1994, the second worker became the owner of the apartment, based on a sale-purchase contract certified in the Municipal Court in Prishtina.

14. On an unspecified date, the first worker filed a claim with the Housing and Property Claims Commission (hereinafter, the HPCC) for the confirmation of the property rights over the apartment.

15. On 13 May 2004, the Applicant eventually purchased the apartment from the second worker by the sale-purchase contract OV. no. 2616/2004, certified in the Municipal Court in Prishtina, .

16. On 22 October 2005, the HPCC (Decision HPCC/D/226/2005/A&C) approved the request of the first worker, recognizing the housing right, which was lost *"as a consequence of discrimination during the period from 23 March 1989 until 24 March 1999"*.

17. The Decision of HPCC was rendered as a cover decision related to some claims, wherein*, inter alia*, the claim of the first worker was challenged by the second worker, whereas the claim of the second worker was challenged by the first worker. Both claims were about the apartment in question. The claim of the first worker was decided as grounded, whereas the claim of the second worker was rejected.

18. Moreover, the HPCC decided that the sale-purchase contract Ov. no. 2616/2004, of 13 May 2004, concluded between the second worker and the Applicant *"was inconsistent with Articles 5.1 and 5.2 of UNMIK Regulation 2000/60, and therefore it was invalid"*.

19. On 19 December 2005, the second worker and the Applicant filed a request for reconsideration of Decision HPCC/D/226/2005/A&C. The first worker was the responding party to these proceedings.

20. On 31 March 2006, the request for reconsideration was rejected as ungrounded, because "*the Applicants have not presented any new relevant evidence which was not considered by the Commission when deciding on the requests. The Commission has not found any substantial violation in the application of UNMIK/Regulation/2000/60"*.

21. On 29 August 2007, the Applicant requested to the KPA the confirmation of his property right over the same apartment, again indicating the first worker as the responding party. The first worker filed an appeal with the Kosovo Property Claims Commission (hereinafter, KPCC).

22. On 22 October 2012, KPCC (Decision KPCC/D/R/175/2012) rejected the Applicant's request, reasoning that this legal matter is *res judicata,* as it was finally decided by Decision of HPCC (HPCC/REC/61/2006), dated of 31 March 2006.

23. On 27 May 2013, the Applicant filed an appeal with the Appellate Panel against that decision of KPCC.

24. On 19 March 2014, the Appellate Panel (Judgment GSP-KPA-A-158/13) rejected the Applicant's appeal as ungrounded and upheld Decision of KPCC (Decision KPCC/D/R175/2012), of 22 October 2012.

Applicant's Allegations

25. The Applicant claims that the proceedings before HPCC and KPCC violated Articles 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 54 [Judicial Protection of Rights] provided by the Constitution, and Article 6 of the ECHR.

26. The Applicant alleges that "*in the court proceedings, the court approved the decision in administrative proceedings, by which the Applicant's right to protection of property, provided by Article 46 of the Constitution, has been denied. This is because the Court has accepted the assessment of the administrative authority in the finding that the legal transaction of the establishment of the property right was taken in violation of the rules of administrative authority.*"

27. The Applicant also claims that *"the denial of the right to obtain from the court a final legal reply, constitutes violation of the fundamental right to a fair trial provided for in Article 31"* ... and his right to judicial protection as guaranteed by Article 54 of the Constitution.

Admissibility of the Referral

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

29. In this regard, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

30. 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".*

31. In addition, Rule 36 of the Rules of Procedure foresees:

> *"(1) The Court may consider a referral if: [...] (d) the referral is prima facie justified or not manifestly ill-founded.*
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: [...] (d) the Applicant does not sufficiently substantiate his claim".*

32. The Applicant claims that the challenged Judgment has violated his right to equality before the law, to protection of property and to judicial protection rights, as guaranteed by the Constitution.

33. In fact, the Applicant alleges that the HPCC and KPCC, as administrative authorities, have decided arbitrarily on his property right and that *"the court accepted the assessments of the administrative authority".*

34. The Court notes that the Applicant has not provided any procedural or substantive reasoning in his Referral; he only emphasizes the abovementioned claims, without further explanation on how and why such violations allegedly occurred.

35. In this regard, the Court notes that Decision HPCC/D/226/2005/A&Cis reasoned both in terms of recognition of rights to the first worker and also in terms of the contract of sale between the second worker and the Applicant *"which was inconsistent with Articles 5.1 and 5.2 of UNMIK Regulation 2000/60, and therefore it was invalid."*

36. In addition, the Court notes that the Appellate Panel rejected the Applicant's request as ungrounded, mainly reasoning that:

> *"After the Decision of HPCC dated 22 October 2005 was confirmed by the Decision HPCC/REC/61/2006 dated 31 March 2006, the Decision of HPCC has become final" (...) and, consequently, "a new trial between the same parties is not allowed for a legal matter for which a final decision exists". (...) "As the case before HPCC was related to the same matter – the apartment, and as it was between the same parties, the case is res judicata"*

37. The Appellate Panel further concluded that *"In accordance with Article 13.6 of UNMIK Regulation no. 2006/50, as amended by Law no. 03/L-079, this Judgment is final and binding and cannot be challenged by regular or extraordinary legal remedies".*

38. The Court considers that the proceedings before the HPCC and KPCC, and also before the Appellate Panel, were fair and that the decisions were entirely justified and thoroughly reasoned, namely explaining why *"a new trial between the same parties is not allowed for a legal matter for which a final decision exists"*.

39. Therefore, the Constitutional Court considers that the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicant had a fair trial. (See, *inter alia, Edwards v. United Kingdom,* No. 13071/87, Report of European Commission of Human Rights of 10 July 1991; and, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECHR, Decision of 30 June 2009).

40. In addition, the Applicant has not indicated how and why the decision on rejecting his request to repeat the proceedings, based on the existence of *res judicata,* constitute a violation of his individual rights and freedoms.

41. In fact, the Court considers that the Applicant has not provided any *prima faciem* evidence which would point out to a violation of his constitutional rights guaranteed by the Constitution (See: *Vanek vs. Slovak Republic,* No. 53363/99 ECHR, Decision, of 31 May 2005) and he has not specified how the invoked Articles of the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

42. Moreover, the Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts, or other public authorities. It is the role of the regular courts or of other public authorities to interpret and apply the pertinent rules of both procedural and substantive law. (See: *mutatis mutandis*, *Garcia Ruiz vs. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28. See also case of the Constitutional Court no. KI70/11, *Applicants: Faik Hima, Magbule Hima and Bestar Hima* Resolution on Inadmissibility of 16 December 2011).

43. Therefore, the Court concludes that the Applicant has not substantiated and proved the claim for a violation of his rights to equality before the law, right to fair trial and protection of property.

44. In sum, the Court finds that in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Applicant's allegations are manifestly ill-founded and thus the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 20 and 48 of the Law and Rule 36 (1) d) and (2) d) of the Rules of Procedure, on 31 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Almiro Rodrigues

President of the Constitutional Court
Arta Rama-Hajrizi

KI36/15, Applicant Sahit Ninaj - Constitutional Review of Decision of the Supreme Court, Rev. no. 378/2014, of 29 December 2014

KI36/15, Resolution on Inadmissibility of 4 September 2015, published on 21 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, compensation, protection of property, judicial protection of rights*

The Supreme Court rejected as ungrounded the request for revision submitted by the Applicant, with respect to his right to compensation of the house burned down during the war. The Applicant filed complaint with the Constitutional Court alleging a violation of the right to a fair trial, judicial protection of rights and protection of property.

The Constitutional Court considered that the Applicant does not agree with legal qualification of the facts and application of the procedural provisions by regular courts. Legal qualification of the facts and applicable law are issues which fall within the scope of legality. The referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI36/15
Applicant
Sahit Ninaj
Constitutional Review of Decision of the Supreme Court, Rev. no. 378/2014, of 29 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Sahit Ninaj, with residence in Prizren.

Challenged Decision

2. The Applicant challenges Decision Rev. No. 378/2014, of the Supreme Court, of 29 December 2014, by which the Applicant's request for revision against the Decision CA. no. 611/2014, of the Court of Appeal, of 25 August 2014, was rejected as inadmissible. The Applicant alleges that the challenged Decision was served on him on 30 January 2015.

Subject Matter

3. The subject matter is the constitutional review of the aforementioned Decision Rev. no. 378/2014, of the Supreme Court, which according to Applicant's allegations has violated his rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention of Human Rights (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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 23 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 April 2015, by Decision GJR. KI36/15, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, by Decision KSH. KI36/15, the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 28 April 2015, the Court informed the Applicant about the registration of the Referral, and submitted a copy of the Referral to the Supreme Court.

8. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court to declare the Referral inadmissible.

Summary of Facts

9. Based on the facts described by the Applicant in the Referral addressed to the Court, the Applicant, on an unspecified date, addressed the Municipality of Prizren with the request that the latter provides and delivers him a parcel from the Municipal Fund of Immovable Properties, as a compensation for his house burned down during the war. The Applicant further states that the place, where his house was located, was mined. According to the Applicant, the Municipality of Prizren has never responded to his request.

10. Following the request asserted in the preceding paragraph, on 22 April 2009, the Applicant filed a claim with the Municipal Court in Prizren, through which he has requested that the Municipality of Prizren compensates him with an immovable property in a surface area of 2 are for the construction of his house.

11. On 18 November 2010, the Municipal Court in Prizren (Decision, C. no. 280/09) decided to suspend the proceedings with the reasoning that the Municipality of Prizren was a litigating party in a capacity of a respondent, and therefore, for the claims against the public authority through which is required monetary compensation or other compensation, the Applicant had to provide a copy of the documents to the Ministry of Justice.

12. As a result of the above mentioned Decision of the Municipal Court in Prizren, the Applicant notified the Ministry of Justice on his claim.

13. On 10 May 2011, the Applicant, in his urgency addressed the Municipal Court in Prizren, requested the Municipal Court to schedule the session of the main hearing, and he also stated that the value of the dispute is € 3.100 and not € 50 as he had stated in his claim filed on 22 April 2009.

14. On 12 December, 2013, the Basic Court in Prizren (Decision, C. no. 280/09) held that the claim submitted was incomplete because it did not contain the necessary elements of a claim as required by the provisions of the Law on Contested Procedure (hereinafter: the LCP). As a result, the Basic Court remanded the Applicant's claim for completion and correction, requesting the Applicant that within three (3) days to specify the manner of compensation for immovable property for which the compensation is required and to identify the immovable property, where the Applicant's house was located.

15. In its Decision, the Basic Court, *inter alia*, stated that if the claim is not completed and corrected as required by its Decision, the claim will be rejected.

16. As a result of the above mentioned Decision, on 23 December 2013, the Applicant filed with the Basic Court the submission with supplement to the claim. Regarding the manner of compensation of immovable property, the Applicant requested as compensation for his burnt house that Prizren Municipality provides him a parcel of immovable property from the Municipal Fund of Immovable Property, by not specifying the immovable property, which he requested as compensation. Regarding the identification of immovable property where his burnt house was located, the Applicant stated that this real estate can be identified on the basis of expertise.

17. On 26 December 2013, the Basic Court in Prizren (Decision, C. no. 280/2009) rejected the Applicant's statement of claim.

18. In its Decision, the Basic Court in Prizren found that despite the submission filed by the Applicant on 23 December 2013, the Applicant did not correct and supplement the lawsuit as requested by the decision of 12 December 2013. As to the way of compensation of immovable property, the Basic Court found that the Applicant did not specify the manner of compensation of the immovable property and did not identify the immovable property or the parcel for which he sought compensation.

19. On 22 January 2014, the Applicant submitted an appeal to the Court of Appeal against the Decision of the Basic Court in Prizren. In his appeal, the Applicant alleged violation of the contested procedure, incomplete determination of factual situation and erroneous application of the substantive law.

20. On 25 August 2014, the Court of Appeal (Decision, Ca. no. 611/2014) rejected the Applicant's appeal as ungrounded and upheld Decision C. No. 280/09, of the Basic Court in Prizren, of 26 December 2013.

21. In its Decision, the Court of Appeal held that the Applicant has not specified his claim as requested by the Basic Court in Prizren. Therefore, according to the Court of Appeal, the Applicant's allegations of erroneous and incomplete determination of factual situation and erroneous application of substantive law were ungrounded because the Basic Court in Prizren did not go into determination of factual situation and was unable to apply the substantive law, because the Basic Court rendered its Decision pursuant to procedural provisions.

22. On 9 October 2014, the Applicant filed a request for revision with the Supreme Court against the aforementioned Decision of the Court of Appeal.

23. On 29 December 2014, the Supreme Court (Decision, Rev. no. 378/2014) rejected the request for revision as inadmissible.

24. The Supreme Court, referring to the provisions of the LCP, found that the revision in this legal matter is not admissible, because the value of disputed facility, which the Applicant stated in his statement of claim and which value was not changed by submission for supplement of his claim, is less than the value of the subject of the dispute, as specified in the provisions of the abovementioned Law.

Applicant's Allegations

25. As mentioned above, the Applicant alleges that the challenged Decision has violated his rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.

26. The Applicant further alleges that the regular courts, by their decisions, have also violated his right guaranteed by Article 6 of the ECHR, because his claim was not considered at all.

27. The Applicant concludes by requesting the Court to *"return the previous situation before decisions, Rev. No. 378/2014, dated 29 12 2014, Ac. no. 611/2014, dated 25.8. 2014 and C. No, 280/2009, dated 26.12.2013, because in such a situation my statement of claim can be considered and the court decision on merits in the Basic Court in Prizren can be rendered."*

Admissibility of the Referral

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

29. The Court takes into account Article 48 of the Law, which provides:

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

30. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

> *(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2)The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
> *[...]*

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...]

(d) the Applicant does not sufficiently substantiate his claim.

31. In his Referral, the Applicant alleges, among other things, that his right to fair and impartial trial has been violated because the regular courts by rejecting his claim as incomplete, and by rejecting his request for revision as inadmissible have not considered at all his claim.

32. In this regard, the Court notes that the Basic Court in Prizren, following its request for completion and specification of the claim filed by the Applicant, decided to reject the claim because the claim did not contain necessary elements of claim as required by provisions of the LCP. As a result of the Applicant's appeal against the abovementioned decision, the Court of Appeal upheld the decision of the Basic Court, holding that the Basic Court in Prizren rendered its decision by applying the relevant provisions of the procedural law.

33. In addition, the Court also notes that the Supreme Court, by referring to the relevant provisions of the procedural law, rejected the Applicant's request for revision as inadmissible, because the value of the subject of the dispute, which the Applicant stated in his claim, and which value according to the Supreme Court was not changed either by the submission for supplement of his claim, is less than the value of the subject of the dispute, specified in the provisions of the LCP.

34. However, the Applicant does not explain and show how his rights and freedoms guaranteed by the Constitution and the ECHR have been violated, in particular his right to fair and impartial trial.

35. In this regard, the Court notes that the Applicant does not agree with legal qualification of the facts and application of the procedural provisions by regular courts. Legal qualification of the facts and applicable law are issues which fall within the scope of legality.

36. In this regard, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the regular courts, except and to the extent they might have violated the rights and freedoms protected by the Constitution (constitutionality)

37. The Court further considers that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings conducted before the regular courts, in particular before the Supreme Court, is not sufficient for an Applicant to build an allegation on a constitutional violation (See *mutatis mutandis* case *Mezotur -Tiszazugi Vízgazdálkodási Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such a violation of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument (See case No. KI198/13 Applicant *Privatization Agency of Kosovo,* Constitutional Court, Resolution on Inadmissibility of 13 March 2014)

38. Therefore, the Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and substantive law (See, *Garcia Ruiz v. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima,* Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

39. Finally, the Applicant has not filed any convincing argument to establish that the alleged violations mentioned in the Referral represent violations of the constitutional rights (See case *Vanek v. Republic of Slovakia,* No. 53363/99, ECHR Admissibility Resolution of 31 May 2005).

40. For the aforementioned reasons, the Court concludes that the facts presented by the Applicant do not in any way justify his allegation of a violation of the constitutional rights and that the Applicant has not sufficiently substantiated his claim.

41. Therefore, the Referral is manifestly ill-founded, and therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, on 4 September 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Bekim Sejdiu	Arta Rama-Hajrizi

KO107/15, Applicants Albulena Haxhiu and 23 other deputies - Constitutional review of Decision No. 05-V-139 of the Assembly of the Republic of Kosovo on approval of Amendment XXIV to the Constitution of the Republic of Kosovo, adopted on 3 August 2015

KO107/15, Resolution on Inadmissibility of 8 September 2015, published on 21 September 2015

Keywords: *Institutional referral, manifestly ill-founded referral, abstract control, constitutional amendment, ratione materiae jurisdiction rights and freedoms guaranteed by chapters II and III of the Constitution*

In this case, the Applicants challenge Decision no. 05-V-139 of the Assembly on approval of Amendment XXIV of the Constitution of the Republic of Kosovo, adopted on 3 August 2015. The Applicants allege that the challenged decision adopts Amendment XXIV to the Constitution, which is in violation of the constitutional provisions on equality before the law, international agreements, election rights, the judicial system and the Ombudsperson.

The Constitutional Court assessed the Applicants' referral on procedural and substantive grounds. The Court noted that the Applicants' Referral was identical to the Case KO26 /15, where they dealt with the same constitutional issues regarding the diminishing of the rights and freedoms guaranteed by Chapters II and III of the Constitution. The Constitutional Court concluded that it does not have jurisdiction to review a constitutional amendment once it has been adopted by the Assembly in accordance with Article 144.4 of the Constitution and concluded that there was no need to refer the proposed amendment for the second time.

The Referral was declared inadmissible as manifestly ill-founded on procedural ground in accordance with Rule 36 (2) (d) of the Rules of Procedure, whereas on substantive ground, the referral was declared inadmissible, because it is incompatible ratione *materiae* with Article 113.5 Constitution, Article 42 of the Law and Rules 36 (3) (a) and 36 (3) (e) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KO107/15
Applicants
Albulena Haxhiu and 23 other deputies of the Assembly of the Republic of Kosovo
Constitutional review of Decision No. 05-V-139 of the Assembly of the Republic of Kosovo on approval of Amendment XXIV to the Constitution of the Republic of Kosovo, adopted on 3 August 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

The Applicants

1. The Applicants are Albulena Haxhiu, Glauk Konjufca, Puhie Demaku, Albin Kurti, Salih Salihu, Besa Baftiu, Besnik Bislimi, Faton Topalli, Shqipe Pantina, Ismajl Kurteshi, Fisnik Ismaili, Donika Kadaj-Bujupi, Time Kadrijaj, Teuta Haxhiu, Rrustem Berisha, Lahi Ibrahimaj, Daut Haradinaj, Pal Lekaj, Ramush Haradinaj, Valdete Bajrami, Shukrije Bytyqi, Haxhi Shala, Enver Hoti and Zafir Berisha (hereinafter: the "Applicants"), all of them elected Deputies of the Assembly of the Republic of Kosovo (hereinafter "the Assembly"). Before the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), the Applicants have authorized Ms. Albulena Haxhiu to represent them.

Challenged decision

2. The Applicants challenge Decision No. 05-V-139 of the Assembly on approval of Amendment XXIV to the Constitution of the Republic of Kosovo, adopted on 3 August 2015.

Subject matter

3. The Applicants request the Court to review the constitutionality of the challenged decision both on substantive and on procedural grounds.

4. The Applicants allege that the challenged decision adopts Amendment XXIV to the Constitution which is in violation of constitutional provisions: Article 1, paragraphs (1) and (2) [Definition of State]; Article 3 [Equality Before the Law]; Article 22 [Direct Applicability of International Agreements and Instruments]in conjunction with Article 7 of the Universal Declaration of Human Rights; Article 24 [Equality Before the Law]; Article 35 [Freedom of Movement]; Article 45 [Freedom of Election and Participation]; Article 102 [General Principles of the Judicial System]; Article 103 [Organization and Jurisdiction of Courts]; Article 104 [Appointment and Removal of Judges]; Article 114 [Composition and mandate of the Constitutional Court]; and Articles 132, 134 and 135, regarding the Ombudsperson.

5. In addition, the Applicants allege that the procedure followed leading up to the voting and adoption of the challenged Decision was not in compliance with Article 113.9 and Article 144.3 of the Constitution of the Republic of Kosovo (hereinafter: the "Constituion")

Legal basis

6. The Referral is based on Article 113.5 of the Constitution and Articles 42 and 43 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law").

Proceedings before the Court

7. On 11 August 2015 the Applicants submitted the Referral to the Court.

8. On 12 August 2015 the Ms. Albulena Haxhiu submitted copies of the ID Cards of all the Applicants.

9. On 12 August 2015 the President of the Court, by Decision No. GJR. KO107/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President of the Court, by Decision No. KSH. KO107/15, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Bekim Sejdiu.

10. On 13 August 2015 the Court notified the Applicants of the registration of the Referral and requested from the representative of the Applicants

to submit to the Court a copy of the challenged decision, including the annexes thereto, in order to complete the application.

11. On 14 August 2015 the representative of the Applicants submitted the requested documents to the Court, which contained Decision No. 05-V-139 on the adoption of Amendment XXIV, and the text of the adopted Amendment XXIV.

12. On 14 August 2015 the Court notified the Government of the Republic of Kosovo (hereinafter: the "Government") and the President of the Assembly of the submission of the Referral and asked them to submit their comments in respect to the Referral. The Court also asked the Government and the President of the Assembly to provide the Court with the complete files regarding the draft Amendment and any supporting documents as provided to the Assembly and the Deputies of the Assembly, respectively.

13. On the same day the President of the Republic of Kosovo (hereinafter: the "President of the Republic") was informed about the Referral submitted by the Applicants to the Court.

14. On 17 August 2015 the President of the Assembly submitted the requested files to the Court, which contained the following documents:

    a. the file that was delivered to the Deputies of the Assembly on 31 July 2015 for preparing the plenary session of 3 August 2015, which included Decision 01/41 of the Government for the re-submission of Amendment XXIV to the Assembly, the text of the proposed Amendment XXIV, and the Judgment of the Constitutional Court AGJ788/15 of 14 April 2015 in Case KO26/15;

    b. the Transcript of the plenary session of the Assembly of 3 August 2015;

    c. the Minutes of the session of the Assembly of 3 August 2015;

    d. Decision No. 05-V-139 on the approval of Amendment XXIV;

    e. the text of the approved Amendment XXIV; and

    f. the electronic registry of the voting of 3 August 2015 on the approval of Amendment XXIV.

15. On 18 August 2015 the Government submitted the requested documents to the Court. These documents consisted of the letter of the

Prime Minister by which Amendment XXIV was re-submitted for voting, Decision 01/41 of the Government to re-submit Amendment XXIV, and the text of the proposed Amendment.

16. On 19 August 2015 the President of the Republic submitted a letter to the President of the Court requesting a clarification concerning the implications of the Referral to the President's obligations under Article 80 of the Constitution.This request related specifically to the signature and promulgation of two Laws which had been adopted by the Assembly on the basis of Amendment XXIV to the Constitution.

17. On 20 August 2015 the President of the Court replied to the letter of the President of the Republic, explaining that the Referral KO107/15 concerns a challenge to the Decision of the Assembly No. 05-V-139 on the approval of Amendment XXIV, of 3 August 2015. The President of the Court also informed the President of the Republic that the constitutionality of the two laws mentioned above was not being challenged before the Constitutional Court.

18. On 28 August 2015 the Prime Minister of the Republic of Kosovo (hereinafter: "the Prime Minister") submitted a letter to the Court containing the Government's comments.

19. On 8 September 2015 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

20. On 7 March 2015 the Government decided to propose to the Assembly an Amendment to the Constitution.

21. On the same date the Government, pursuant to Article 144.1, of the Constitution, proposed to the President of the Assembly the text of the Amendment to the Constitution.

22. On 9 March 2015 the President of the Assembly referred to the Court the text of the proposed Amendment to the Constitution, requesting from the Court to make a prior assessment as to whether the proposed Amendment diminishes any of the rights and freedoms set forth in Chapter II of the Constitution. The Court registered the Referral under number KO26/15.

23. On 14 April 2015 the Court deliberated on the Referral and rendered Judgment AGJ 788/15, which confirmed that the proposed Amendment XXIV does not diminish any of the constitutional rights

guaranteed by Chapter II of the Constitution, as well as under Chapter III of the Constitution and its letter and spirit, as established in the Court's case law.

24. On 26 June 2015 the Assembly deliberated and voted on the proposed Amendment XXIV and with 75 votes in favour, 7 votes against and 2 abstentions, failed to adopt it.

25. On 31 July 2015 the Government decided to re-submit the proposed Amendment XXIV to the Assembly for another vote.

26. On the same date the President of the Assembly notified all Deputies of the Assembly of the re-submission of the proposed Amendment. This notification included a copy of the Decision of the Government, the text of the proposed Amendment XXIV and a copy of the Judgment of the Constitutional Court on Case KO26/15.

27. On the same date the President of the Assembly convoked a meeting of the presidency of the Assembly, during which it was decided that the proposed Amendment would be put to a vote on 3 August 2015.

28. On 3 August 2015 the Assembly deliberated and voted on the proposed Amendment and, by Decision No. 05-V-139, with 82 votes in favour, 5 votes against and 1 abstention, adopted it.

29. On 5 August 2015Amendment XXIV was published in the Official Gazette of the Republic of Kosovo (hereinafter: the "Official Gazette").

Arguments presented by the Applicants

30. In their Referral the Applicants challenge Decision No. 05-V-139, both on substantive and on procedural grounds.

As to the substantial aspect of the Referral:

31. Despite the fact that the Applicants challenge Decision No. 05-V-139, the Court notes that the arguments presented by them do not concern the substance of that Decision, but they are related to the substance of the text of Amendment XXIV and may be summarized as follows:

32. The Applicants argue that "*With this provision is overthrown the entire constitutional system, taking into account that the provisions of this amendment are fully inconsistent with the character and subjectivity of the Republic of Kosovo. Thus, based on the general provisions of the Constitution of Kosovo, namely Article 1, paras. 1 and 2, and Article 3, as read in conjunction with Article 24, Articles*

102, 103 and 104 on organization of the judicial system, by the content of this Article the state of Kosovo is stripped also in formal aspect, of its statehood and the republican character."

33. Further on, the Applicants present their arguments related to each paragraph of the Amendment. In this regard, the Applicants argue that despite the fact that Paragraph 1 of this Amendment states that the Specialist Chambers and the Office of the Specialist Prosecutor will be established within the justice system of Kosovo "*...according of the Amendment, the elements of dependence of this body are nowhere specified in relation to the constitutional bodies, provided in the Constitution of the Republic of Kosovo. Thus, the appointment, selection and responsibility of the holders of this body have not been sanctioned at all, even the special competencies in the substantive aspect and of the execution of criminal sanctions, imposed by the trial panels of this parallel body, were recognized to it."*

34. According to the Applicants, paragraph 2 of Amendment XXIV provides the procedural safeguards for the potential indicted persons in compliance with Article 22 and 55 of the Constitution, but it is in contradiction with other provisions of this Amendment. The Applicants claim that *"The proclamation of fundamental rights, by referring to Chapter II, and in particular Article 22 and 55, of the Constitution and on the other hand, the provisions of these paragraphs to be excluded from the comparison and collision with other provisions of the Constitution, is a legal argument that these provisions have also substantive collision between them and with the rest of the constitutional provisions."*

35. The Applicants also argue that Paragraph 3 of Amendment XXIV is unconstitutional. Namely, this provision provides that a Specialist Chamber composed of three (3) international judges will be established within the Constitutional Court, which shall exclusively decide on constitutional referrals relating to the Specialist Chambers and Specialist Prosecutor's Office. According to the Applicant *"... The Specialist Chamber, as named by the sponsor, is in full contradiction with the provisions of Article 114 of the Constitution in terms of its composition. Another element regarding the collision that these norms are creating in this amendment is the subject matter jurisdiction of this "specialist" chamber in relation to Article 112 and 113 of the Constitution."*

36. Moreover, the Applicants allege that Paragraph 4 of Amendment XXIV, by granting to the Specialist Chambers and Specialist Prosecutor's Office full legal capacity, juridical personality, and all necessary powers and mandate to enter into international relations

with third states, *"... gives this institution the attributes of external sovereignty that is a substantial component of the full understanding of the notion of state sovereignty. For this reason, this provision excludes even the main holder of the control of external sovereignty, and that is the Assembly."*

37. Similarly, the Applicants argue that Paragraph 5 of Amendment XXIV *"violates the competencies of the Assembly of Kosovo, as provided by Article 65, item 4, of the Constitution related to the competence for ratification of international agreements. Thus, the consent for international agreements that will be concluded by the specialist chambers and the office of specialist prosecutor will be taken only from the Government, and not from the Assembly of Kosovo as provided by Article 18 of the Constitution."*

38. Furthermore, the Applicants claim that the competency granted in Paragraph 6 of Amendment XXIV to the Specialist Chambers to determine their own Rules of Procedure *"... opens the possibility that the proceeding of cases before this judicial mechanism is exceptional for citizens of the Republic of Kosovo in terms of implementation of the positive law. This corresponds directly in contradiction to Article 24 of the Constitution of Kosovo and even to the content of the rights sanctioned by the international acts that are directly applied under Article 22 of the Constitution..."*

39. In addition, the Applicants argue that Paragraphs 7 and 8 of Amendment XXIV, which regulate the matter of the seats of the Specialist Chambers and Specialist Prosecutor's Office, and the geographical location where the accused and the sentenced persons will be placed, are in violation of the Constitution. According to the Applicants *"... the restriction of inter-dependence between the citizen and the state of Kosovo makes Kosovo citizens discriminated against, against whom is held the trial, the punishment is imposed and is executed in separate proceedings and in another territory. This issue is related to the extradition of citizens of the Republic of Kosovo and, under Article 35, paragraph 4, the extradition of citizens of Kosovo, within their human fundamental right regarding free movement, shall not be extradited from Kosovo except for cases when otherwise required by international law and agreements."*

40. The Applicants also consider that Paragraph 10 of Amendment XXIV, which provides that a specific law shall be adopted in order to regulate matters related to the appointment, oversight and administration of judges and prosecutors of Specialist Chambers and Specialist Prosecutor's Office, is in violation of Article 102 of the Constitution, notwithstanding the fact that *"... in paragraph 1 of this amendment*

they are referred as under the judicial system of the Republic of Kosovo."

41. Moreover, the Applicants allege that Paragraph 11 of Amendment XXIV, which provides that a separate Ombudsperson will be established with exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office, is in contradiction with the Constitution because he/she *"... will not be elected, nor shall report to the Assembly of Kosovo under the provisions of Article 132, paar. 2, and Articles 134 and 135, paras. 1 and 2, of the Constitution of Kosovo."*

42. Furthermore, the Applicants argue that Paragraph 12 of Amendment XXIV, which regulates by an international agreement matters of the oversight, financing, budgeting, auditing and other aspects of the organization and functioning of the Specialist Chambers and the Specialist Prosecutor's Office, creates a double standard and will *"... legalize internal constitutional contradiction regarding Article 3 and Article 102 of the Constitution, and in terms of human rights under Chapter II, it will result in violation of Article 24 and of Article 22 in conjunction with Article 7 of the UDHR concerning the right to equal treatment and equal protection before the law."*

43. The Applicants also claim that paragraphs 13 and 14 of Amendment XXIV, concerning the mandate of the Specialist Chambers and Specialist Prosecutor's Office, *"... creates legal and constitutional uncertainty and such a regulation violates the legal order in general because, while constitutional provisions undergo special constitutional procedure and approval by the double qualified majority in accordance with Article 144, par. 2, of the Constitution, the act in which these two paragraphs are referred, is approved by a single qualified majority and it is subject to the regulation of the Constitution of the Republic of Kosovo."*

44. Finally,

> *"The Applicants requesting the constitutional review of the constitutional Amendment no. XXIV to the Constitution of the Republic of Kosovo, consider that the provisions of this Amendment in the substantive aspect are contrary to the constitutional order of the Republic of Kosovo, namely to the concrete constitutional provisions:*
>
> *Article 1 paragraph (1) and (2) - Definition of State*
>
> *Article 3 - Equality Before the Law*

Article 22 - Direct Applicability of International Agreements and Instruments in conjunction with Article 7 of the Universal Declaration of Human Rights

Article 24 - Equality Before the Law

Article 35 - Freedom of Movement

Article 45 - Freedom of Election and Participation

Article 102 - General Principles of the Judicial System

Article 103 - Organization and Jurisdiction of Courts

Article 104 - Appointment and Removal of Judges

Article 114 - Composition and mandate of the Constitutional Court

Articles 132, 134 and 135 - regarding the Ombudsperson"

As to the procedural aspect of the Referral:

45. In relation to the procedure followed in the adoption of the challenged decision, the Applicants argue that procedural violations also occurred.

46. In this respect, the Applicants claim that after the extra-ordinary meeting of the Presidency of the Assembly of 31 July 2015, in which it was decided that the plenary session for re-voting on Amendment XXIV shall take place on 3 August 2015, *"... the accompanying material was not sent to the deputies of the Assembly of Kosovo, which would be reviewed in the plenary session."*

47. Moreover, the Applicants quote Article 113.9 and 144.3 of the Constitution, which stipulate that prior to putting to a vote in the Assembly of an amendment to the Constitution, the proposed amendment shall be referred by the President of the Assembly to the Constitutional Court in order to confirm that the proposed amendment does not diminish the rights guaranteed by Chapter II of the Constitution. The Applicants state that,

"Despite the Decision of the Assembly of Kosovo, rendered in the plenary session of 26 June 2015, the Government of Kosovo on 31 July 2015, re-proceeded to the Assembly of Kosovo the draft amendment with the same content, by not taking into account the

decision rendered by the Assembly of Kosovo on 26 June 2015. [...] The President of the Assembly should have submitted the draft amendment for assessment to the Constitutional Court."

48. In addition the Applicants state that referring the proposed amendment to the Constitutional Court is obligatory and the formulation of Article 113.9 of the Constitution does not allow for any variation. *"Under this provision, here is not taken at all into account the discretionary right of the President of the Assembly, to alternate the proceedings of a draft constitutional amendment before the Constitutional Court."*

49. According to the Applicants "*... the Constitutional Court is the only state authority which has the constitutional authorization to make a conclusion regarding any proposal for amendment to the Constitution in relation to human rights and fundamental freedoms.*

    [...]

    The procedural presumptions have the essential character to guarantee the right content of the matter for which is conducted the respective procedure referred the maxim "forma data esse rei" (the form determines the content). For this reason, the violation of the procedural presumption that have absolute character, and in the present case the imperative nature of the provision of Article 113.9 is indisputable, makes that the proceeded matter according to the procedural deformation challenges the legitimacy of the content of the matter itself, to which is given legal power precisely in this procedure."

50. Similarly, the Applicants argue that Article 144.3 "*... gives the meaning of a requirement for any proceeding that is related to the constitutional amendments. Therefore, an amendment cannot enter into force although it had fulfilled the requirements for the approval by the qualified majority under Article 144.2 of the Constitution of Kosovo."*

51. In addition the Applicants emphasise the importance of Article 144.3 by stating that, *"If we clarify this issue through the rules of systematic interpretation, it is sufficient to take into account paragraph 4 of Article 144, which defines the moment of entry into force of a constitutional amendment voted by the Assembly of Kosovo. Therefore, the order of paragraph 4, after paragraph 3, is an indicator that the process of the approval of a constitutional amendment and its entry into force is conditioned by paragraph 3 of Article 144 of the Constitution."*

52. The Applicants conclude their arguments on the procedural aspect of the alleged violations by including also Rule 82 of the Rules of Procedure of the Assembly, which reflects the constitutional provisions on procedures of adoption of amendments to the constitution. The Applicants allege that these procedures were not followed.

Comments submitted by the Prime Minister

53. In the letter of 28 August 2015 of the Prime Minister it is stated, *"... that Amendment XXIV to the Constitution of the Republic of Kosovo, submitted by the Government to the Assembly of the Republic of Kosovo, on 31 July 2015, and adopted by the Assembly in the plenary session dated 03 August 2015, is IDENTICAL with the text that was submitted to the Constitutional Court and reviewed by this Court in Case KO26-15, namely by Judgment AGJ 788/15."*

54. Furthermore, the letter argued *"... that all these allegations are ungrounded because, in relation to this matter, we already have a Judgment of the Constitutional Court, whereby it was ascertained that Amendment XXIV does not diminish the fundamental human rights and freedoms set forth under Chapters II and III of the Constitution of the Republic of Kosovo."*

55. In conclusion, it is proposed to the Court, *"... to DECLARE INADMISSIBLE [Referral KO107/15], since we are dealing with a case that has already been adjudicated (res judicata)."*

Admissibility of the Referral

56. In accordance with Article 113.5 of the Constitution, the task of the Court is to review whether the substance of the contested decision and the procedure followed in its adoption are in violation of the Constitution, as alleged by the Applicants. In this respect, the Applicants consider that the contested decision in its substance violates Articles 1, 3, 22, 24, 35, 45, 102, 103, 104, 114, 132, 134 and 135 of the Constitution, while the procedure followed in the event of the adoption of Decision No. 05-V-139 was in violation of Articles 113.9 and 144.3 of the Constitution.

57. In order for the Court to adjudicate the Applicants' Referral it is necessary to examine whether the Applicants have fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law. The Court must first determine whether the Referral has been submitted by an authorized party.

58. In this respect, the Court refers to Article 113.1 of the Constitution, which establishes that:

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

59. As to these requirements, the Court recalls that the Applicants filed their Referral pursuant to Article 113.5 of the Constitution, which provides:

> *"Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed."*

60. The Court notes that the Referral was submitted by 24 deputies of the Assembly, within 8 days of the adoption of Decision No. 05-V-139. Therefore, the Court concludes that the Applicants are authorized parties to bring the Referral challenging this Decision before the Court.

61. However, the Court will further examine other admissibility criteria, which are applicable in the present case.

As to the challenged decision:

62. The Court notes that the Applicants challenge Decision No. 05-V-139 of the Assembly, of 3 August 2015. This Decision states that:

> *"The Assembly of the Republic of Kosovo, pursuant to Articles 65 (2) and 144 of the Constitution of the Republic of Kosovo as well as Article 6.2 of the Rules of Procedure of the Assembly, in the plenary session held on 3 August 2015, having reviewed the Proposal-Amendment no. 24 to the Constitution of the Republic of Kosovo, re-proceeded by the Government of the Republic of Kosovo, rendered the following:*

DECISION

1. *Amendment no. 24 to the Constitution of the Republic of Kosovo, re-proceeded by the Government of the Republic of Kosovo, is approved.*

2. *The amendments to the Constitution shall enter into force immediately upon the approval by the Assembly of the Republic of Kosovo."*

As to the substantial aspect of the Referral:

63. In this respect, the Court refers to Rule 36 (3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure"), which provides that:

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

(a) the Court does not have jurisdiction in the matter;

(b) the Referral is made anonymously;

(c) the Court considers that the Referral is an abuse of the right of petition;

(d) the Court has already issued a Decision on matter concerned and the Referral does not provide sufficient grounds for a new decision;

(e) the Referral is incompatible ratione materiae with the Constitution;

(f) the Referral is incompatible ratione personae with the Constitution

(g) the Referral is incompatible ratione temporis with the Constitution"

64. In this connection, the Court observes that the Applicants' arguments are mainly related to the substantive content of Amendment XXIV, although they allege that they are challenging Decision No. 05-V-139.

65. This is also evident from the concluding part of the substantive aspect of the allegations, where the Applicants request from the Court "... *the constitutional review of the constitutional Amendment no. XXIV to the Constitution of the Republic of Kosovo, consider that the provisions of this Amendment in the substantive aspect are contrary to the constitutional order of the Republic of Kosovo*".

66. In this respect, the Court reiterates that Article 113.9 of the Constitution reads:

> *"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."*

67. The Court also refers to Article 144.3 of the Constitution, which stipulates that:

> *"Amendments to this Constitution may be adopted by the Assembly only after the President of the Assembly of Kosovo has referred the proposed amendment to the Constitutional Court for a prior assessment that the proposed amendment does not diminish any of rights and freedoms as set forth in Chapter II of the Constitution."*

68. In this direction, the Court recalls that the Constitution does not grant any competence to the Court for reviewing a constitutional amendment as to its substantive content following its adoption. The competence of the Court with regards to the substance of a constitutional amendment is to review whether a proposed amendment diminishes any of the rights and freedoms as set forth in Chapter II of the Constitution, prior to the amendment being put for approval to the Assembly.

69. Furthermore, the Court refers to its case-law (see, *mutatis mutandis*, Judgment No. AGJ469/13, of 9 September 2013 in case KO95/13, at paragraph 97 and following). Similarly to that case, the Court considers that Amendment XXIV to the Constitution and Decision No. 05-V-139 of the Assembly are two separate legal acts. Each of these Acts follows a different legal procedure, for the constitutional assessment of the draft Amendment and for the Decision to adopt the Amendment, respectively.

70. The Court recalls that for the adoption of an amendment to the Constitution, a special majority of votes is required in the Assembly, as provided in Article 144.2. This provision states that, *"Any amendment shall require for its adoption the approval of two thirds (2/3) of all deputies of the Assembly including two thirds (2/3) of all deputies of the Assembly holding reserved or guaranteed seats for representatives of communities that are not in the majority in the Republic of Kosovo."*

71. As to the adoption of Amendment XXIV, the Court notes that the decision to adopt was taken by the required two-thirds majority of the Assembly as specified by the Constitution. As such, the Court considers that the Decision of the Assembly to adopt Amendment XXIV was in compliance with the procedural provisions of the Constitution.

72. The Decision on the adoption of any constitutional amendment, in this case Amendment XXIV, is, in its substance, the announcement that an amendment has been adopted by the required majority. The amendment as such cannot be changed between the time of its assessment by the Court and its adoption by the Assembly, because any change to a constitutional provision requires the prior approval of the Court as to its compliance with the provisions of Chapter II of the Constitution.

73. Therefore, the Applicants' arguments regarding the substance of Amendment XXIV cannot be taken into account at this point in time. Arguments of that nature were appropriately addressed to the Court at the time when the assessment of compliance of the amendment with Chapter II of the Constitution was under consideration by the Court. Indeed, the Court recalls that it distributed the Referral KO26/15 to all members of the Assembly, who were given the opportunity to present their comments on the constitutionality of Amendment XXIV at that time (see Judgment AGJ 788/15 in case KO26/15 of 15 April 2015, paragraph 7).

74. Furthermore, Article 144.4 of the Constitution states that,

> *"Amendments to the Constitution enter into force immediately after their adoption in the Assembly of the Republic of Kosovo."*

75. The Court notes that, with Articles 113.9 and 144.3, the Constitution places all considerations regarding the assessment and confirmation of the constitutionality of proposed constitutional amendments to the time period prior to the adoption of an amendment. For this reason, in Article 144.4 the Constitution authorizes the immediate entry into force of constitutional amendments following their adoption. The compliance of the amendment as such with the Constitution can no longer be subject to question because this has been assessed and approved prior to the decision to adopt it.

76. In particular, the Court notes that this procedure differs from that which applies to the adoption of Laws by the Assembly. Following the adoption of a Law, Article 113.5 of the Constitution allows for a period

of eight (8) days following its adoption during which a minimum of ten (10) deputies may challenge the constitutionality of that Law.

77. In compliance with this provision, Article 43.1, of the Law provides that, *"A law or decision adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation after the expiry of the deadline prescribed by Article 113, Paragraph 5 of the Constitution."*

78. In such cases, the constitutionality is assessed by the Court after the adoption of the law or decision, rather than before, and promulgation by the President of the Republic of Kosovo is connected to the referral of the law or decision to the Court for an assessment of constitutionality.

79. Furthermore, in such cases, the Constitution provides, in Article 116.2, that, *"While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages."*

80. Where it concerns the adoption of an amendment to the Constitution, the Court finds that the entry into force of the amendment is not contingent upon promulgation by the President of the Republic, but instead it enters into force immediately following its adoption by the Assembly, as stipulated in Article 144.4.

81. This is also evidenced by Decision No. 05-V-139 of the Assembly, under point 2, which states that, *"The amendments to the Constitution shall enter into force immediately upon the approval by the Assembly of the Republic of Kosovo."*

82. Although the question has not been raised by the Applicants, the Court considers that in these circumstances the submission of a Referral under Article 113.5 of the Constitution against the Decision to adopt the amendment cannot suspend the entry into force of the amendment itself, because its immediate entry into force is directly regulated by a constitutional provision.

83. In this regard, the Court recalls Article 16 [Supremacy of the Constitution] which stipulates that, *"1. The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution."*

84. In the present case, the Court also notes that the Applicants have not submitted any request to the Court to suspend the contested Decision

No. 05-V-139. Consequently, in this Referral, the question of a suspension of any contested action or law does not arise.

85. The Court recalls that Amendment XXIV was subject to a prior assessment by the Court, and it was confirmed that this amendment does not diminish the constitutional rights guaranteed by Chapter II of the Constitution as well as under Chapter III of the Constitution and its letter and spirit as established in the Court's case law. (see *Judgment of the Constitutional Court* AGJ 788/15 of 15 April 2015, in Case KO26/15 *Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433jDO-318*).

86. On 3 August 2015 this same amendment was adopted by the Assembly with 82 votes in favour, 5 votes against and 1 abstention.

87. Furthermore, the Court notes that Amendment XXIV to the Constitution has entered into force pursuant to Article 144.4 of the Constitution.

88. Consequently, in the context of this Referral, the Court concludes that it does not have jurisdiction to review a constitutional amendment once it has been adopted.

89. The Court notes that, in their submissions, the Applicants have not addressed any arguments to the substance of the contested Decision 05-V-139 to adopt Amendment XXIV. As such, the Court finds that the Applicants have not substantiated their complaints in relation to this Decision.

90. Therefore, in accordance with Rules 36 (3) (a) and 36 (3) (e), the Court finds the allegations related to the substance of the challenged decision, inadmissible.

As to the procedural aspect of the Referral:

91. The Court observes that, with regards to the procedural aspect of the Referral, the main argument of the Applicants supporting their allegation of procedural violations is built around the fact that the President of the Assembly re-submitted the proposed amendment without referring the proposed Amendment XXIV to the Court for review under Article 144.3 of the Constitution, prior to the voting on the re-submitted amendment.

92. In this connection the Court refers to Article 42 [Accuracy of the Referral] of the Law which foresees:

> *"1. In a referral made pursuant to Article 113, Paragraph 5 of the Constitution the following information shall, inter alia, be submitted:*
>
> *1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;*
>
> *1.2. provisions of the Constitution or other act or legislation relevant to this referral; and*
>
> *1.3. presentation of evidence that supports the contest."*

93. In this respect the Court recalls that, prior to undertaking its assessment of this Referral, it requested information from all involved parties: the Government as the sponsor of Amendment XXIV, the President of the Assembly which sent the proposed amendment to the Deputies, as well as from the Applicants, to submit to the Court, *inter alia,* the text of the proposed amendment and the text of the adopted amendment.

94. In due time the Court received the re-submitted proposed Amendment XXIV from the Government, the text of the proposed Amendment XXIV and the text of the adopted Amendment XXIV by the President of the Assembly as re-submitted and voted, plus the text of the adopted Amendment XXIV submitted by the Applicants.

95. In order to check the content of this Amendment, the Court compared these texts with the content of the proposed Amendment which it had previously assessed in Case KO26/15.

96. The Court notes that the Applicants also state in their Referral that the re-submitted draft amendment had the same content as the draft amendment voted and rejected by the Assembly on 26 June 2015, which had been submitted to the Court and assessed in its Judgment of 14 April 2015.

97. The Government also confirmed, in its letters of 18 and 28 August 2015 in response to the Court's request for information, that the draft amendment re-submitted to the Assembly on 31 July 2015 was identical to the draft amendment as previously submitted to the Court for its assessment in case KO26/15.

98. Furthermore, the President of the Assembly stated, in his letter of 17 August 2015 in response to the Court's request for information, that,

> *"The Government of the Republic of Kosovo, on 31 July 2015, re-proceeded to the Assembly Amendment no. 24 to the Constitution of the Republic of Kosovo, reviewed by the Judgment of the Constitutional Court of the Republic of Kosovo, in Case KO26/15, No. ref. AGJ 788/15, of 15 April 2015."*

99. In this context, the Court concluded that the content of the proposed Amendment XXIV, as it was submitted to the Court for a prior assessment on 9 March 2015, is identical with the text of the proposed Amendment XXIV, which was resubmitted by the Government and forwarded by the President of the Assembly to all Deputies on 31 July 2015. Moreover, the text of the Amendment, which was adopted on 3 August 2015 and subsequently published in the Official Gazette two days after, remains identical with the initial text which was assessed by the Court previously.

100. In these circumstances, the Court considers that there was no need to refer for the second time the proposed Amendment, since it had already been reviewed once before, and its substantive content did not undergo any change or modification.

101. The Court notes that the Applicants also allege that the constitutional procedures were violated because, following the extra-ordinary meeting of the Presidency of the Assembly of 31 July 2015, the materials related to the draft Amendment were not submitted to the Deputies.

102. However, the Court notes that, together with its letter of 17 August 2015, the Presidency of the Assembly provided a copy of the complete file as it was submitted on 31 July 2015 to all deputies prior to the vote of 3 August 2015. As such, this file contained Decision 01/41 of the Government for the re-submission of Amendment XXIV to the Assembly, the text of the proposed Amendment XXIV, and the Judgment of the Constitutional Court AGJ788/15 of 14 April 2015 in Case KO26/15.

103. Therefore, the Court finds that the Applicants have failed provide evidence in support of this complaint.

104. The Court recalls that under Article 42, para. 1.3, of the Law, in a referral made pursuant to Article 113.5 of the Constitution, *"the following information shall, inter alia, be submitted: [...] 1.3 presentation of evidence that supports the contest."*

105. Furthermore, Rule 36 (2) (d) of the Rules of Procedure foresees that "*the Court shall declare a Referral as being manifestly ill-founded when it is satisfied that (...) the Applicant does not sufficiently substantiate his claim.*"

106. The Court concludes that the Applicants failed to present evidence to substantiate their allegations in support of their contest of a violation of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.5 of the Constitution, Article 42, para. 1.3, of the Law and Rules 36 (2) (d), 36 (3) (a) and 36 (3) (e) of the Rules of Procedure, on 21 September 2015, 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	Arta Rama-Hajrizi

KI05/15, Applicant Reshat Osmani - Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, AC-I-14-0061, of 5 September 2014

KI05/15, Resolution on Inadmissibility, of 31 August 2015, published on 23 September 2015

Keywords: *Individual Referral, manifestly ill-founded referral, adverse possession, right to fair and impartial trial, protection of property*

The Appellate Panel of the Supreme Court rejected the appeal of the Applicant regarding the ownership of two cadastral parcels because of the ambiguity of his allegations. The Applicant filed appeal with the Constitutional Court for violation of the right mainly to fair and impartial trial and to protection of property.

The Constitutional Court found that dissatisfaction with the decision does not suffice for the Applicant to raise an allegation of a constitutional violation of the right to a fair trial, and that the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be grounded.. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI05/15
Applicant
Reshat Osmani
Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, AC-I-14-0061, of 5 September 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Reshat Osmani with residence in Hani i Elezit, who is represented by Mr. Miftar Islami, practicing lawyer in Ferizaj.

Challenged decision

2. The challenged decision is the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC), AC-I-14-0061, of 5 September 2014, which rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Specialized Panel of the SCSC (hereinafter: the Specialized Panel of the SCSC), of 12 February 2014.

3. The challenged decision was served on the Applicant on 23 September 2014.

Subject matter

4. The subject matter of the Referral is the constitutional review of the Judgment of the Appellate Panel of the SCSC which, according to the Applicant's allegations violated his rights guaranteed by 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), as well as Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

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

Proceedings before the Constitutional Court

6. On 14 January 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 9 February 2015, the President of the Court, by Decision GJR. KI05/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President by Decision, KSH. KI05/15, appointed the Review Panel, composed of Judges, Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 20 February 2015, the Court notified the Applicant of the registration and requested him to submit the authorization for representation before the Court. On the same date, the Court submitted a copy of the Referral to the SCSC.

9. On 9 March 2015, the Applicant submitted the authorization for representation before the Court.

10. On 23 March 2015, the Court sent a copy of the Referral to the Privatization Agency of Kosovo (hereinafter: PAK).

11. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

12. In 1963, the Applicant's father sold two (2) parcels of land located in the municipality of Ferizaj to an Agricultural Cooperative.

13. Based on the case files, following a change in the law, in 1996, the Applicant's father filed a claim with the Municipal Court in Ferizaj to annul the sale of those two (2) plots of land.

14. On 23 March 1998, the Municipal Court in Ferizaj (Judgment, P. No. 287/96) apparently approved the claim of the Applicant's father and annulled the purchase contract of 1963 as unlawful. In addition, the Municipal Court ordered the agricultural cooperative, the Socially-Owned Enterprise "Pasuria Bujqësore" to hand over the plots to the Applicant's father, and obliging him to pay a certain amount of money to the agricultural cooperative in compensation. It appears that these two plots of land were never transferred to the Applicant's father.

15. At some point in time the Applicant's father died. As the legitimate heir, the Applicant continued to pursue the claim for the return of the plots of land.

16. From the case files it appears that the aforementioned plots became subject of a privatization process by PAK.

17. On 4 August 2011, the Applicant submitted a request to PAK to remove the plots from the privatization process.

18. On 17 October 2011, the Applicant filed a claim with the SCSC, initially seeking verification of ownership over two (2) cadastral parcels, based on adverse possession.

19. On 5 December 2011, the Applicant filed another request with the Specialized Panel of the SCSC for a preliminary injunction to remove the plots of land from the privatization process.

20. On 19 March 2012, the Specialized Panel of the SCSC rejected the Applicant's request for preliminary injunction as ungrounded.

21. On an unspecified date, as a result of the privatization process, PAK sold the aforementioned plots to a third party.

22. On 10 December 2013, the Specialized Panel of the SCSC held a public hearing, whereby it provided the Applicant with the possibility to amend or specify his claim. During the public hearing, the Applicant

through his representative had requested either the return of the cadastral parcels, for which he was claiming the ownership or compensation with another plot of land for the parcels, which in the meantime were sold to a third party. As to the Applicant's second request, the Specialized Panel of the SCSC during the public hearing has requested the Applicant to specify the plot of land he was requesting as compensation for the sold parcels.

23. On 12 February 2014, the Specialized Panel of the SCSC (Judgment, SCC-11-0240) rejected the Applicant's claim as ungrounded.

24. As to the Applicant's claim on the confirmation of his ownership over the two (2) aforementioned cadastral parcels based on the adverse possession, the Specialized Panel of the SCSC held that prohibition of the adverse possession against Socially Owned Enterprises was abolished in 1996 and only as of that time it was possible to restart counting it. Hence, the Specialized Panel of the SCSC referring to the provisions of the Law on Basic Property Relations held that the period for the adverse possession of the land property is twenty (20) years. Therefore, according to the Specialized Panel of the SCSC, even if the land had not been sold to the third party, the Applicant would not acquire the ownership rights based on the aforementioned legal basis.

25. As to the Applicant's claim for compensation of another plot of land, the Specialized Panel of the SCSC held that, despite the fact the Applicant was given the possibility to specify his claim, he failed to identify the land he was requesting as compensation for the parcels that were sold to a third party.

26. Hence, the Specialized Panel of the SCSC concluded that the Applicant's claim has to be rejected because it is ungrounded from the factual point of view and further held that even if the claim had been amended and specified as requested by the Specialized Panel of the SCSC, it would consider it is as ungrounded because the requirements of the adverse possession were not met in his case.

27. On 16 February 2014, the Applicant filed an appeal against the Judgment of the Specialized Panel of the SCSC, requesting the latter to approve his request for compensation with another plot of land or quash the Judgment of the Specialized Panel of the SCSC and remand the case for review and retrial. As to the conclusion of the Specialized Panel of the SCSC, that the Applicant had failed to specify his claim, he argued that it was impossible to identify the plot of land he was requesting as compensation, since he did not have access to the Cadastral Service.

28. On 5 September 2014, the Appellate Panel of the SCSC (Judgment, AC-I-14-0061) rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Specialized Panel of the SCSC.

29. In its Judgment, the Appellate Panel of the SCSC, referring to the provisions of the Law on Contracts and Torts (Official Gazette of SFRY 29/78) held that even in case the Specialized Panel of the SCSC had confirmed the ownership of the claimed parcels to the Applicant and PAK had alienated that parcel to his detriment, the latter would only be entitled to a monetary compensation. According to the Appellate Panel of the SCSC, the Applicant did not request for such compensation.

30. Thus, the Appellate Panel of the SCSC concluded that the Applicant's appeal is to be rejected as ungrounded because *"the lack of a sufficient clarified request hinders the court to grant any legal remedy."*

Applicant's allegations

31. As mentioned above, in his Referral, the Applicant alleges that the Judgment of the Appellate Panel of the SCSC violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, as well as Article 6 [Right to a fair trial] of the ECHR.

32. The Applicant addresses the Court with the following request for compensation with *"another plot of land or monetary compensation in accordance with the value determined by the experts."*

Admissibility of the Referral

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

34. The Court takes into account Article 48 of the Law, which provides:

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

35. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

> *"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

[...], or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...]

(d) the Applicant does not sufficiently substantiate his claim".

36. As mentioned above, the Applicant alleges violation of his right to fair trial and impartial trial and protection of property, guaranteed by the Constitution and the ECHR.

37. However, the Court notes that the Applicant only listed the aforementioned provisions, but did not present any arguments or evidence in support of his allegations.

38. In this regard, the Court reiterates that dissatisfaction with the decision does not suffice for the Applicant to raise a credible allegation of a constitutional violation of the right to a fair trial. When alleging constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be grounded. (See Case No. KI198/13, Applicant: *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).

39. Furthermore, the Court reiterates that it is not its task under the Constitution to substitute the role of the regular courts in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999; see also Case KI70/11, Applicants: *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

40. The Court considers that both the Specialized Panel and the Appellate Panel of the SCSC conducted the proceedings in a fair way and justified their decisions on the grounds of the Applicant's claim and the appeal. In this relation, the Appellate Panel of the SCSC confirmed that the Applicant was given several possibilities to specify or identify the plot of land he was requesting as compensation for the sold parcels by PAK and therefore the Appellate Panel concluded that the Applicant had failed to provide a sufficiently specified request for the court to decide on any legal remedy.

41. Finally, the Applicant has not presented any convincing arguments to establish that the alleged violations mentioned in the Referral represent constitutional violations (See case *Vanek vs. Republic of Slovakia*, No. 53363/99, ECtHR Decision of 31 May 2005) and did not specify how the referred articles of the Constitution and the ECHR were violated.

42. Based on the foregoing, the Court concludes that the Applicant has not substantiated his allegations of violations of his right to a fair and impartial trial and protection of property. Therefore, the Referral is manifestly ill-founded, and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (2), b) and d) of the Rules of Procedure on 31 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI18/15, Applicant "Iming" D.O.O. Rrustem Zogaj, owner - Constitutional Review of Decision AC-I-14-0357-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 5 February 2015

KI18/15, Resolution on Inadmissibility of 31 August 2015, published on 23 September 2015

Keywords: *Individual Referral, manifestly ill-founded referral, premature referral interim measure, the process of privatization, share call option, preliminary injunction, the right to fair and impartial trial, protection of property, the principle of equality*

The Appellate Panel of the Supreme Court rejected the Applicant's appeal regarding the withdrawal of his shares in a social enterprise by the Kosovo Privatization Agency, and for the imposition of provisional measures (preliminary injunction) to further actions of the Privatization Agency of Kosovo. The Applicant filed complaint with the Constitutional Court mainly for violation of the right to a fair and impartial trial and to protection of property. The Applicant also requested the imposition of interim measure to further actions of the Privatization Agency of Kosovo.

The Constitutional Court concluded that the Applicant's referral related to the decision of the Privatization Agency of Kosovo is premature, while his allegation regarding the rejection of the Applicant's proposal for a preliminary injunction is inadmissible as manifestly ill-founded, because it has not substantiated its allegations of violation of the principle of equality, protection of property and its right to fair and impartial trial. The Constitutional Court also rejected the Applicant's request for imposition of interim measures. The Constitutional Court declared the Referral inadmissible as manifestly unfounded and premature in accordance with Articles 47 and 48 of the Law and Rules 36 (1) (b) and 36 (2) (b) and (d) and 56 (2) and (3) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI18/15
Applicant
"Iming" D.O.O.
Rrustem Zogaj, owner
Constitutional Review of DecisionAC-I-14-0357-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on
Privatization Agency of Kosovo Related Matters,
of 5 February 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is the company "Iming" D.O.O., with headquarters in Stobec of the Republic of Croatia, owned by Mr. Rrustem Zogaj. The Applicant is represented by Mr. Sahit Bibaj and Mr. Gafurr Elshani, lawyers in Prishtina.

Challenged Decision

2. The Applicant challenges Decision AC-I-14-0357-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of SCSC), of 5 February 2015, by which DecisionC-I-14-0022, of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Specialized Panel of SCSC), of 19 November 2014 on rejection of Applicant's proposal for imposing preliminary injunction was upheld.

3. The challenged decision was served on Applicant on 9 February 2015.

Subject t Matter

4. The subject matter is the constitutional review of the abovementioned Decision of the Appellate Panel of SCSC, by which the Applicant's appeal against the Decision of the Specialized Panel of SCSC was rejected as ungrounded.

5. The Specialized Panel of SCSC rejected the Applicant's proposal for issuing preliminary injunction, by which the Applicant requested temporary suspension of the decisions of the Board of Directors of the Privatization Agency of Kosovo on share call and placing New Company MIM "Golesh" under administration of the Privatization Agency of Kosovo (hereinafter: PAK).

6. The Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose Interim Measure, namely *"PROHIBITION OF EXECUTION OF DECISIONS OF THE PAK, with Ref. No. BD-69/35, of 21 August 2014, Decision BD-69/36, of the same date and also Decisions C-I-14-0022, of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo, of 19 November 2014 and Decision No. AC-I-14-0357-A0001, of the Appellate Panel of the same Chamber, of 05 February 2015, until the final decision of the Court."*

Legal Basis

7. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: 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 Constitutional Court

8. On 19 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

9. On 12 March 2015, the President of the Court by Decision GJR. KI18/15, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision KSH. KI18/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.

10. On 30 March 2015, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the SCSC and PAK.

11. On26June2015, the President of the Court by Decision GJR. KI18/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI18/15 appointed Arta Rama-Hajrizi as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on26June2015.

12. On 2 July 2015, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On 11 December 2007, after the completion of the privatization process through the Special Spin-off, the Kosovo Trust Agency (hereinafter: KTA), concluded a contract with the Applicant to sell the entire share capital of New Company MIM "Golesh" LLC (hereinafter: MIM "Golesh").

14. The contract signed between the KTA and the Applicant, obliged the Applicant to meet certain requirements specified in the commitment agreement. Among those requirements were the commitments to implement certain financial investments and employment of a certain number of employees within a certain time limit. Non-fulfillment of these commitments may have resulted in withdrawal of shares.

15. According to the case file, it follows that the PAK, as the legal successor of the KTA, in 2009, due to non-fulfillment of commitments defined in the commitment agreement within the certain time limit, had given an extension of deadline for 2 (two) years, the term that would have expired in 2011.

16. In 2012, the Board of Directors of PAK, with a justification that the Applicant did not act in full compliance with investment commitments, decided to withdraw the shares purchased by the Applicant, a decision which was subsequently suspended giving the Applicant another period of 41 months, to fulfill the commitments. This term would have expired in October 2015.

17. However, before the expiration of the aforementioned deadline, namely on 31 August 2014, the Board of Directors of PAK (Decision no. BD-69/35), with justification that the Applicant did not act in full

compliance with the commitments defined in the commitment agreement, decided to execute the Decision of the Board of Directors of PAK, of 16 December 2011, for the withdrawal of shares of NewCo MIM "Golesh" LLC.

18. On the same date, the Board of Directors of PAK (Decision no. BD-69/36) decided to place New Co MIM "Golesh" LLC under the administration of the PAK.

19. On 23 October 2014, Acting Deputy Managing Director of PAK rendered the decision to implement the two decisions of the PAK Board of Directors of 31 August 2014.

20. On 30 October 2014, the Applicant submitted to the Specialized Panel of SCSC, the proposal for preliminary injunction, namely the temporary suspension of the decisions of the PAK Board of Directors, of 31 August 2014.

21. On 3 November 2014, the Applicant also filed a claim with the SCSC for the annulment of the abovementioned decisions of the KPA Board of Directors, of 31 August 2014. Based on the case file, the Applicant's claim is still pending in the SCSC.

22. On 19 November 2014, the Specialized Panel of SCSC (Decision, CI-14-0022) rejected the Applicant's proposal for preliminary injunction as ungrounded.

23. The Specialized Panel of SCSC in its Decision assessed that the Applicant *"failed to determine that there are sufficient reasons to suspend the action of the PAK Board of Directors, which is challenged by the Applicant in its claim."*

24. The Specialized Panel of SCSC further held that, *"Based on the assessment of indisputable allegations of the claimant and with the purpose of deciding the request for preliminary injunction, by leaving open any assessment on the main issue, the court concludes that the PAK action to withdraw the claimant's shares in the company "Golesh" seems to be lawful, causing no harm at all, so there is no need to suspend it."*

25. As a result, the Specialized Panel concluded that the entry into force of the decisions of the PAK Board of Directors *"does not cause any damage that needs to be compensated later"*.

26. On 25 November 2014, against the Decision of the Specialized Panel of SCSC on rejection of the preliminary injunction, the Applicant filed an appeal with the Appellate Panel of the SCSC.

27. In its appeal, the Applicant requested the annulment of the Decision of the Specialized Panel and the Appellate Panel to hold that the decisions of the PAK Board of Directors, of 31 August 2014 are "*unlawful and taken in violation of legal procedures in force.*" The Applicant further alleged that the decision making by the PAK Board of Directors was not conducted according to legal provisions in force.

28. On 5 February 2015, the Appellate Panel of the SCSC (Decision, AC-I-14-0357-A0001) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Specialized Panel.

29. In its Decision, the Appellate Panel of the SCSC held that the Applicant's appeal allegations that the decisions of the PAK Board of Directors should be taken by qualified majority of votes, with at least five (5) members of the Board, are ungrounded.

30. The Appellate Panel of the SCSC further found that the assessment of the Specialized Panel that *"no damage will be caused to the buyer"* is in accordance with the legal provisions in force, reasoning that the financial damage can always be compensated. Accordingly, the Appellate Panel concluded that:

> *"Based on what was reasoned above, the Appellate Panel finds that the claimant's claim is ungrounded, therefore the decision of the Specialized Panel is upheld as fair and based on law.*
>
> *This Decision of the Appellate Panel concerns only an interim measure and there can be no prejudice to the final adjudication of the claim. "*

31. Based on the case file, it follows that the claim filed by the Applicant is still pending in the Specialized Panel of SCSC.

Applicant's Allegations

32. In its Referral, the Applicant alleges that the Decisions of the Specialized Panel and of the Appellate Panel of the SCSC have violated its rights guaranteed by Article 3 [Equality Before the Law], Article 24 [Equality Before the Law], paragraph 2, Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution, as well as the rights guaranteed by Article 6 [Right to a fair trial] of the European Convention of Human Rights (hereinafter:

the ECHR) and Article 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

33. The Applicant alleges that the Board of Directors of PAK, the Specialized Panel and the Appellate Panel of SCSC, by challenged decisions have seriously violated the law, because the Decision of the Board of Directors of PAK on share call option, of 31 August 2014, was rendered before the expiry of the deadline for the fulfillment of commitments, which was extended by the Board of Directors until October 2015. The Applicant, *inter alia*, states that all actions of the Board of Directors are related to the fact that "*the KTA-PAK did not give the Applicant the consent to mortgage the immovable property in order to ensure the capital investments, which means that the right won through privatization was limited by the KTA-PAK [...]*".

34. Regarding the Applicant's allegation for violation of Article 6 of the ECHR, the Applicant claims that the parties to the proceedings have not been treated equally. The Applicant further adds that the Appellate Panel of the SCSC has found that the decision making in this case should be conducted by qualified majority, and that in the present case, one decision is taken by four votes for and one abstention, while the other decision was taken by five affirmative votes.

35. In this regard, the Applicant addresses the Court with the request to annul the challenged decisions of the Specialized Panel and of the Appellate Panel of SCSC and "*to remand the case for retrial regarding the preliminary injunction so that the appellant* [Applicant] *to return immediately to the assets purchased which have been taken under control of the PAK [...].*"

36. Finally, the Applicant requests the Court to impose Interim Measure, namely to suspend execution of the Decision of the Board of Directors of PAK, of 31 August 2014, and decisions of Specialized Panel and of Appellate Panel of SCSC, until final decision is rendered by the SCSC.

Assessment of the Admissibility of the Referral

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

38. The Court refers to Article 113.7 of the Constitution that 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."

Applicant's allegations regarding the Decision of the PAK Board of Directors

39. As mentioned above, the Applicant alleges that the Decision of the PAK Board of Directors on the share call option, of 31 August 2014, was rendered before the deadline for fulfillment of commitments, and that the decision making in the PAK Board of Directors was conducted contrary to the provisions of the Law on PAK.

40. The Court notes that the Applicant after filing the proposal for preliminary injunction, it also filed a claim with the SCSC for the annulment of the aforementioned decisions of the PAK Board of Directors, of 31 August 2014. The Applicant's claim is still pending before the SCSC Specialized Panel.

41. In this regard, 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."*

42. In this case, the Court also takes into account Rule 36 (1), (b) of the Rules of Procedure:

    (1) "The Court may consider a referral if:

    [...]

    (b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted,

    [...]

43. Taking into account the fact that the Applicant's claim is still pending before the SCSC, the Court considers that the Applicant can also address its claims regarding the manner of decision making by the PAK Board of Directors during the proceedings of review of its claim in the SCSC. Based on this, the Court notes that these allegations are premature, because the regular courts should be given a possibility, respectively the SCSC, to complete the proceedings related to the Applicant's claim that are ongoing.

44. The rationale for the exhaustion of legal remedies is to afford, in this case the regular courts, the opportunity to remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order shall 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: *AAB-RIINVEST L.L.C.,* Constitutional Court, Resolution on Inadmissibility of 21 January 2010 and, see, *Selmouni v. France,* no. 25803/94, ECHR, Decision of 28 July 1999).

45. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of fundamental rights (See Case KI07/09, Applicants: *Demë Kurbogaj and Besnik Kurbogaj*, Constitutional Court, and Resolution on Inadmissibility of 19 May 2010).

46. Accordingly, the Court cannot assess the alleged constitutional violations, without providing the possibility to regular courts, namely the SCSC, to complete the proceedings related to the Applicant's claim that are pending and to correct the alleged violations.

47. Therefore, the Court concludes that the Applicant's allegations regarding the content and the manner of decision making by the Board of Directors of PAK, are premature.

Allegations regarding decisions of the SCSC on rejection of the proposal for preliminary injunction

48. As mentioned above, the Applicant challenges the decisions of the Specialized Panel and of the Appellate Panel of the SCSC regarding its proposal for preliminary injunction, claiming violation of its rights under Article 3 [Equality Before the Law], Article 24 [Equality Before the Law], paragraph 2, Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution, as well as its rights guaranteed by Article 6 [Right to a fair trial] of the ECHR and Article 10 of the UDHR.

49. In this regard, the Court takes into account Article 48 of the Law, which states:

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

50. The Court also refers to Rule36 of the Rules of Procedure, which provides:

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

51. The Court notes that the Appellate Panel of the SCSC in its decision has found that the assessment of the Specialized Panel that no damage will be caused to the Applicant is in accordance with the legal provisions in force, reasoning that a financial damage can always be compensated. The Appellate Panel, without prejudice to the decision on the Applicant's claim with the SCSC, concluded that the Applicant's appeal regarding its proposal for preliminary injunction is ungrounded, upholding the decision of the Specialized Panel as fair and based on the law.

52. The Court considers that the mere fact that the Applicant is not satisfied with the outcome of the decisions of the regular courts is not sufficient for the Applicant to build a claim of a constitutional violation. (See *mutatis mutandis* case *Mezőtúr-Tiszazugi Vízgazdálkodási Társulat against Hungary, No. 5503/02,* ECHR, Judgment of 26 July 2005, paragraph 21*)*.When such violations of the Constitution are alleged, the Applicant must provide a reasoned claim and a compelling argument. (See case KI198/13,Applicant:*Privatisation Agency of Kosovo*, Constitutional Court, Resolution on inadmissibility, of 13 March 2014).

53. In this regard, the Court reiterates that it is not its task under the Constitution to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). Therefore, the Court cannot take the role of 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 *Garcia Ruiz v. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, see also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

54. Moreover, as mentioned above, the Court notes that the reasoning given in the Decision of the Appellate Panel of the SCSC on rejection of the Applicant's proposal for preliminary injunction is clear and, after

the review of the proceedings in their entirety, the Court has found that the completed proceedings before the Specialized Panel and the Appellate Panel of SCSC regarding preliminary injunction have not been unfair or arbitrary (See case *Shub against Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

55. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated its allegation.

56. Therefore, the Applicant's request with respect to its claims regarding the rejection of the Applicant's proposal for preliminary injunction is manifestly ill-founded.

57. In sum, based on the reasoning above, the Court concludes that the Applicant's Referral:

    A. In the part of the Applicant's Referral that relates to his allegations regarding the content and the manner of decision making by the PAK Board of Directors is inadmissible as premature.

    B. The part of the Applicant's Referral that relates to his allegation regarding the rejection of the Applicant's proposal for a preliminary injunction is inadmissible as manifestly ill-founded, because it has not substantiated its allegations of violation of the principle of equality, protection of property and its right to fair and impartial trial, as invoked by the Applicant.

Request for Interim Measure

58. The Applicant requests the Court to impose Interim Measure, namely to suspend the execution of the decisions of the PAK Board of Directors, of 31 August 2014, and decisions of Specialized Panel of SCSC (Decision, CI-14-0022, of 19 November 2014) regarding the rejection of the Applicant's proposal for preliminary injunction and of the Appellate Panel (Decision, AC-I-14-0357-A0001, of 5 February 2015).

59. The Applicant states that the Interim Measure is necessary: *"[...] because the possession of assets and machinery invested in millions was made impossible, hundred employees were fired from their work, interests of the foreign investor, guaranteed by the Law on Foreign Investments in Kosovo, were damaged, the Applicant considers that it has been damaged and also the public interest is damaged by massive dismissals of employees from work, for which the Applicant invested also in their specific qualification beside the*

payment of salaries, and there is also damage of the assets and property which has remained without due supervision and care."

60. In addition, in order that the Court imposes interim measure, pursuant to Rule 55 (4) of the Rules of Procedure, it is necessary 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"*

61. As concluded above, the Referral is inadmissible because the Applicant's allegations regarding the manner of decision making by the PAK Board Directors are premature, while its allegations with regards to the decisions of the Specialized Panel and Appellate Panel regarding the preliminary injunction are manifestly ill-founded.

62. Furthermore, the Court reiterates that a request for the imposition of the Interim Measure should be substantiated on real grounds for a risk or an irreparable damage, the value of which would be irrecoverable in material and monetary aspect (See Case KI187/13, Applicant *N. Jovanović,* the Constitutional Court, Judgement of 16 April 2014, paragraph 74).

63. Therefore, the Applicant's request to impose Interim Measure is to be rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 27, 47.2 and 48 of the Law and Rules 36 (1) (b) and (d), 36 (2) (b) and (d), 55 (4) and 56 (2) and (3) of the Rules of Procedure, on 31 August 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY this Decision to the Parties;

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

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI19/15, Arif Kryeziu - Constitutional Review of a Request on Inclusion in Proceedings of Privatization

KI19/15, Decision to strike out the referral of 4 September 2015, published on 23 September 2015

Keywords: *Individual referral, inadmissible referral, process of privatization, prima facie*

In this case, the Applicant does not challenge any concrete act of a public authority. He merely requests to be included in the list of employees entitled to benefit from the 20% of the proceeds from privatization of the SOE "Liria", from Prizren

The Constitutional Court noted that it cannot take into account the Applicant's allegations, without specifying a concrete act of a public authority and without supporting documents and material evidence, and that the Applicant has not shown a *prima facie* case for fulfillment of the admissibility procedural requirements. The referral was summarily rejected and struck out of the list, in accordance with Article 48 of the Law and Rule 32 (5) (h) of the Rules of Procedure

DECISION
TO STRIKE OUT THE REFERRAL
in
Case no. KI19/15
Applicant
Arif Kryeziu
Constitutional Review of a
Request on Inclusion in Proceedings of Privatization

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Arif Kryeziu (hereinafter: the Applicant), from village Sapniq, Municipality of Prizren.

Challenged decision

2. The Applicant does not challenge any concrete act of a public authority. He merely requests to be included in the list of employees entitled to benefit from the 20% of the proceeds from privatization of the Socially Owned Enterprise "Liria", from Prizren (hereinafter: SOE "Liria").

Subject matter

3. The subject matter has to do with *"the non-inclusion of the Applicant in the list of employees that benefited from the 20% of proceeds from the privatization of the SOE "Liria"",* which allegedly has violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely *"Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], Article 41 [Right of Access to Public Documents], Article 60 [Consultative Council for Communities], Article 78 [Committee on Rights and Interests of*

Communities], Article 106 [Incompatibility], Article 117 [Immunity] and Article 159 [Socially Owned Enterprises and Property] [Article 159 has been deleted by Amendment 20 of the Constitution].*"*

Legal basis

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

Proceedings before the Constitutional Court

5. On 23 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 March 2015, the President of the Court by Decision No. GJR. KI19/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI19/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 26 March 2015, the Court notified the Applicant of the registration of the Referral and requested from him to submit to the Court the last decision which he challenges and other relevant documents.

8. On 7 April 2015, the Applicant submitted to the Court an additional statement regarding his case, but he did not submit any concrete act of a public authority.

9. On 5 May 2015, the Court sent another letter to the Applicant whereby it informed him that if he does not submit the required documents within 7 (seven) days from the receipt of this letter, the Court will decide on the case based on available documents.

10. On 14 May 2015, the Applicant replied to the letter sent by the Court but did not submit the requested documents.

11. On 8 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

12. The Applicant was employed as a guard at the SOE "Liria".

13. On 9 October 2014, the Applicant submitted a letter to the Public Prosecution Office in Prizren, which he considered as a claim against a third party. In his request, the Applicant stated that:

> *"[...] Only because I do not belong to the Albanian nationality, I have been excluded from the privatization of this enterprise, I have not been given what I am entitled to and that is 20%. I have requested it for years, but I was rejected both from the PAK [Privatization Agency of Kosovo] and from [...] as an official in the SOE "Liria."*

14. The Court has not received any decision related to the Applicant's request addressed to the Public Prosecution Office in Prizren, or any other decision that may be associated with the Applicant's case in general.

Applicant's allegations

15. The Applicant claims that his rights guaranteed by Articles 27, 41, 60, 78, 106, 117 and 159 of the Constitution have been violated.

16. Regarding these allegations, the Applicant states that: "*After the privatization of Liria enterprise, my human rights have been violated just because I do not belong to the Albanian nationality and I was not included in the list of 20%, which I am entitled to like any other employee."*

17. In conclusion, the Applicant addresses the Court with the following request: *"I hereby request from you to approve this case in my favor, in order to enjoy my entitlement to 20%."*

Assessment of the admissibility of the Referral

18. 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.

19. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution [...]".

20. In addition, the Court refers to the following provisions of the Law:

Article 22.4 [Processing Referrals]

"4. If the referral [...] is [...] incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for supplementing the respective referral (...)".

Article 48 [Accuracy of the Referral]

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

21. Furthermore, the Court refers to Rules 29 (2) [Filing of Referrals and Replies] and Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provide:

"(2) The referral shall also include:

[...]

(h) the supporting documentation and information."

"(5) The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral [...]."

22. In this regard, the Court notes that the Applicant complains in general on the fact that he was not included in the list of employees who have benefited from the 20% of proceeds from the privatization of the SOE "Liria". Regarding this, he alleges that his rights guaranteed by Articles 27, 41, 60, 78, 106, 117 and 159 of the Constitution have been violated.

23. However, the Court also notes that the Applicant did not specify and did not submit to the Court any concrete act of public authority that may have violated the abovementioned rights.

24. The Court, based on Article 22.4 of the Law and Rules 29 (2) (h) and 32 (5) of the Rules of Procedure, requested twice from the Applicant to

submit the last challenged decision and other relevant documents related to his case.

25. However, the Court has not received any decision of the regular courts within the specified time, besides two additional statements of the Applicant and the decision of the SOE "Liria" of 1999 which had to do with his employment.

26. Bearing in mind the above, the Court considers that it cannot take into account the Applicant's allegations, without him specifying a concrete act of public authority and without supporting documents and material evidence as required by Article 48 of the Law and Rule 29 (2) (h) of the Rules of Procedure.

27. Moreover, the Court emphasizes that it is not a fact-finding court and the burden of proof lies with the Applicant.
28. In fact, the Court considers that the Applicant has not shown a *prima facie* case, in order for the Court to continue with assessment of other procedural admissibility requirements as required by Articles 22.4 of the Law and Rule 29 (2) (h) and 32 (5) of the Rules of Procedure.

29. Therefore, the Court finds that the Referral must be summarily rejected and as such be struck out of the list.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rules 29 (2) 32 (5) of the Rules of Procedure, on 4 September 2015, unanimously

DECIDES

I. TO STRIKE OUT the Referral;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Ivan Čukalović	Arta Rama-Hajrizi

KI31/15, Applicant Tomislav Ilić - Constitutional review of Decision Ka. no. 2/111/ 2015, of the Court of Appeal of Kosovo, of 4 February 2015

KI31/15, Resolution on Inadmissibility of 6 July 2015, published on 29 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, minor offence, right to fair and impartial trial, the customs service, money laundering*

The Court of Appeal of Kosovo rejected as out of time the Applicant's request for extraordinary review, of the final decision regarding the commission of the criminal offense of the minor offence under Article 29.4 of the Law on Prevention of Money Laundering and Financing of Terrorism. The Applicant filed complaint with the Constitutional Court, alleging violation of the right to fair and impartial trial and the access to the Court.

The Constitutional Court noted that in this case there is nothing to indicate that the Applicant, in a timely fashion, in the regular courts challenged whether there had been an arbitrary application of the procedural law to the detriment of the Applicant and that he has not substantiated that the challenged decision violates his rights guaranteed by the Constitution. The Referral was declared inadmissible as manifestly ill-founded in accordance with Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI31/15
Applicant
Tomislav Ilić
Constitutional Review of Decision of the Court of Appeal of Kosovo, Ka. no. 2/III/ 2015, of 4 February 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Tomislav Ilić (hereinafter: the Applicant), with residence in Niš, Republic of Serbia.

Challenged Decision

2. The Applicant challenges Decision of the Court of Appeal of Kosovo, Ka. no. 2/III/ 2015, of 4 February 2015.

Subject Matter

3. The subject matter is the constitutional review of Decision [Ka. no. 2/III/ 2015] of the Court of Appeal of Kosovo, of 4 February 2015.

Legal Basis

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

Proceedings before the Constitutional Court

5. On 11 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 April 2015, the President of the Court, by Decision GJR. KI31/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision KSH. KI31/15, appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Enver Hasani and Arta Rama Hajrizi.

7. On 21 May 2015, the Court notified the Applicant and the Court of Appeal of the registration of the Referral. At the same time, it requested from the Court of Appeal to provide additional information regarding the Applicant's allegations that the decision of the Court of Appeal, of 4 February 2015, had never been physically served.

8. On 28 May 2015, the Court of Appeal responded to the request of the Court.

9. On 1 July 2015, by Decision GJR. KI31/15, the President of the Court appointed Judge Altay Suroy as a member to the Review Panel, replacing Judge Enver Hasani, whose mandate in the Constitutional Court ended on 26 June 2015.

10. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court the inadmissibility of the Referral.

Summary of Facts

11. On 17 September 2012, at a border crossing point, officers of the Kosovo Customs Service confiscated from the Applicant a certain amount of funds that, pursuant to Article 29 of Law no. 03/L-196 on Prevention of Money Laundering and Financing of Terrorism, had to be declared to the competent customs service when entering or exiting from the territory of Kosovo.

12. On 25 June 2014, the Basic Court in Prishtina-Branch in Podujevo rendered Decision [Reg. no. 10118/12-2] which declared the Applicant responsible for committing the offense referred to in Article 29.4 of the Law on Prevention of Money Laundering and Financing of Terrorism. In the conclusion of the decision is stated: „*The party*

dissatisfied has the right to appeal with the Court of Appeal within 8 (eight) days from the day of service of the decision".

13. On 18 July 2014, the Applicant, through his legal representative, Mr. Ž.J., filed an appeal with the Court of Appeal against this Decision [Reg. no. 10118/12-2] of the Basic Court of Prishtina-Branch in Podujeva, of 25 June 2014.

14. On 5 August 2014, the Court of Appeal rendered its Decision [PO. no. 713/2014] which rejected the appeal of the Applicant's legal representative, Mr. Ž.J., as having been submitted out of time, pursuant to Article 216 of the Law on Offences (hereinafter: LO).

15. On 1 December 2014, the Applicant filed a claim with the Court of Appeal, requesting extraordinary review of both the Decision of the Municipal Court in Prishtina-Branch in Podujeva, of 25 June 2014, and the Decision of the Court of Appeal, of 5 August 2014.

16. On 4 February 2015, the Court of Appeal rendered Decision [KA. no. 2/III/2015], by which it rejected the request for extraordinary review as out of time, with the reasoning: "*Pursuant to provisions of Article 237 of the LO, it is provided that the request for review of the final decision may be appealed within time limit of 15 days from the day the decision becomes final, as the Applicant through his legal representative was served with the decision on 16 August 2014, which is confirmed by the mail book of delivery, whereas he submitted by mail the request for review on 01 December 2014, which means that the request for review was filed out of the provided time limit, therefore it is rejected."*

Relevant law

17. Law No. 03/L-196 on Prevention of Money Laundering and Financing of Terrorism

    Article 29. Movement of monetary instruments into and out of Kosovo - Obligation to declare

    "1. Every person entering or leaving Kosovo and carrying monetary instruments of a value of € ten thousand (10,000) or more must declare the amount of the monetary instruments and the source of such monetary instruments in writing, in a format to be prescribed by the Kosovo Customs, to a customs officer, and, if so requested by the officer, shall present the monetary instruments

    [....]".

Applicant's Allegations

18. The Applicant alleges that in the regular procedure he was not allowed to question the witnesses, that the courts did not serve on him the decision and that he could not file the appeals.

19. The Applicant requested from the Court to annul Decision [Reg. no. 101 18/12-2] of the Basic Court in Prishtina-Branch in Podujeva, of 25 June 2014 and Decision [PO. no. 713/2014] of the Court of Appeal of 5 August 2014, or to modify the decisions and suspend the proceedings, so that the Applicant is acquitted of responsibility.

Admissibility of the Referral

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

21. 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."

22. 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."

23. In this case, the Court refers to Rule 36 (1) (d) and (2) (d) of the Rules of Procedure of the Constitutional Court, which provides:

    (1) The Court may consider a referral if:

    [...]

    (d) the referral is prima facie justified or not manifestly ill-founded.

    (2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(d) the Applicant does not sufficiently substantiate his claim;

24. The Court notes that the Applicant has built his constitutional complaint on allegations that in the regular proceedings he was not allowed to take legal actions which, allegedly, caused violation of Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial] Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.

25. After having analyzed the case file submitted by the Court of Appeal on 28 May 2015, the Court found that on 19 September 2012, the Applicant authorized his legal representative, who, according to the power of attorney, was authorized to take all legally permitted procedural actions and to file legal remedies within the deadline prescribed by law.

26. The Court further notes that on the basis of letter of receipt Nr.10118/12-2, the decision of the Basic Court of Prishtina-Branch in Podujeva dated on 25 June2014 was served on the Applicant's legal representative on 09.July2014,whileaccording to the letter of receiptNr.10118/12-2, the decision of the Appellate Court of Kosovo dated on 4 February2015, was served on the Applicant's legal representative on 30 March2015.

27. Regarding the constitutional review of Decision [Ka. no. 2/III/2015] of the Court of Appeal of Kosovo, of 4 February 2015, the Court considers that in the proceedings before the Court of Appeal it was decided on the existence of legal requirements for filing a request for an extraordinary review of the final decision, and not on the resolution of the merits upon the Applicant's request.

28. According to the assessment of the Court, the Court of Appeal based its decision [KA. no. 2/III/2015], which rejected the request for extraordinary review of the final decision, of 4 February 2015, on relevant legal provision of Article 237 of LO, which provides:

> *„The request for an extraordinary review of the final decision shall be filed within 15 days from the date the decision becomes final. The request for an extraordinary review of the final decision shall be submitted in writing to the High Court for Minor Offenses".*

29. Accordingly, in this case there is nothing to indicate that the Applicant, in a timely fashion, in the regular courts contested whether there had been an arbitrary application of the procedural law to the detriment of the Applicant.

30. 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 regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain,* ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

31. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, as the Applicant has not substantiated that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.

32. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 6 July 2015, 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 paragraph4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Arta Rama-Hajrizi

KI39/15, Applicant Fetije Haliti - Constitutional Review of Judgment ARJ-UZVP. no. 4/2015, of the Supreme Court of Kosovo, of 27 February 2015

KI39/15, Resolution on Inadmissibility of 10 September 2015, published on 29 September 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, apartment for rental use, social care*

The Supreme Court rejected the request for extraordinary reconsideration of a court decision submitted by the Applicant, regarding the provision of a rented apartment for social cases. The Applicant filed complaint with the Constitutional Court alleging violation of the right to fair and impartial trial.

The Constitutional Court noted that the reasoning given in the challenged decision is clear, and viewed in their entirety, the proceedings before the regular courts have not been unfair or arbitrary and that the Applicant did not substantiate her allegations and has not submitted any *prima facie* evidence that would justify such allegations of violation of the rights guaranteed by the Constitution. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 20 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI39/15
Applicant
Fetije Haliti

Constitutional Review of Judgment ARJ-UZVP. no. 4/2015, of the Supreme Court of Kosovo, of 27 February 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalovič, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Ms. Fetije Haliti (hereinafter: the Applicant), from village Kushevica, Municipality of Podujeva.

Challenged Decision

2. The challenged decision is Judgment ARJ-UZVP. no. 4/2015, of the Supreme Court of Kosovo, of 27 February 2015, which was allegedly served on the Applicant on 14 March 2015.

Subject Matter

3. Subject matter of the Referral is the constitutional review of the challenged Judgment, which according to the Applicant's allegations has violated her constitutional rights, without mentioning any specific provision 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of

the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 March 2015, the Applicant submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) a request for constitutional review of the challenged decision.

6. On 22 April 2015, the President of the Court by Decision no. GJR. KI39/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI39/15, appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Enver Hasani and Arta Rama-Hajrizi.

7. On 18 May 2015, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent to the Supreme Court a copy of the Referral.

8. On1 July2015,by Decision Nr. K.SH.KI 39/15, the President of the Court appointed Judge Bekim Sejdiu as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on26June2015.

9. On 9 September 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 30 September 2010, the Committee for allocation of apartments in the Municipality of Prishtina (hereinafter: the Committee) for rental use for cases under social care, through Notice no. 02. no. 360-254, informed the Applicant that her application for the allocation of the apartment for rental use for cases under social care was rejected, on the grounds that it does constitute a social case.

11. On an unspecified date, the Applicant through a claim filed with the Supreme Court of Kosovo for initiation of the administrative conflict, challenged the above mentioned Notice due to incomplete and incorrect determination of factual situation and erroneous application of legal provisions.

12. On 29 November 2011, the Supreme Court acting upon the Applicant's claim, by Judgment A. no. 1074/2011, approved the Applicant's

statement of claim and annulled the Committee's Notice 02. no. 360/254, of 30 September 2010. This court *inter alia* reasoned that:

> *"The Court finds that in this case the responding authority [the Committee] has violated the law to the detriment of the claimant [the Applicant], because the decision- notification mentioned above cannot be considered fair and based on law.*
> *[...] must necessarily be given reasons for all those acts which partially or completely deny, suppress, restrict or affect in any way the legal rights and interests or impose obligations or penalties [...]."*

13. On 27 December 2011, the Municipal Public Attorney's Office in Prishtina filed an appeal against Judgment A. no. 1074/2011, of the Supreme Court of Kosovo, of 29 November 2011, by which requested the annulment of this judgment.

14. On 20 March 2012, the Applicant through the response to the appeal challenged the appeal of the responding party [the Committee] with an allegation that it is ungrounded.

15. On 10 July 2012, the Panel of the Supreme Court of Kosovo by Judgment A.A. no. 201/2011, rejected the appeal of the responding party as ungrounded and upheld Judgment A. no. 1074/2011, of the Supreme Court of Kosovo, of 29 November 2011 with the reasoning that:

> *"[...] pursuant to Article 11 of the LAP [Law on Administrative Procedure], the respondent was obliged to decide on the request of the claimant by decision [...]."*

16. On 5 August 2012, the Committee, deciding in the reconsideration proceedings, by Decision rejected as ungrounded the Applicant's request 02. no. 360-254, of 30 September 2010, with justification that the Applicant did not meet the criteria provided by the Regulation on Allocation of Apartments for Rental Use for Cases under Social Care, because according to the Committee, the Applicant does not belong to the category of people under social care.

17. Against the Decision of the Committee, of 5 August 2012, the Applicant on 6 November 2012, filed a claim for initiating an administrative conflict before the Basic Court in Prishtina - Administrative Matters Department, through which requested the annulment of the said Decision.

18. On 22 January 2013, the Applicant submitted a complaint to the Office of Disciplinary Counsel regarding the delay of deciding on her case by the Supreme Court of Kosovo (and now by the Basic Court in Prishtina).

19. On 15 April 2013, the Office of Disciplinary Counsel, through the letter no. ZPD/13 /zp/290, informed the Applicant that this office did not find legal basis to open a disciplinary investigation regarding her complaint and informed that the case in question is allocated to a judge and is awaiting to be decided.

20. On 3 June 2014, the Basic Court in Prishtina -Administrative Matters Department, deciding on the Applicant's claim, by Judgment A. no. 1126/2012, rejected her statement of claim as ungrounded. Among other things, this court reasons that:

> *"[...] The claimant in 2010 was registered as a resident of the Municipality of Podujeva, therefore the Committee rightly concluded that the claimant did not meet the requirement set out in article 7, paragraph (b) of the Regulation. The Committee has also rightly concluded that the claimant was not on the list of persons or families receiving social assistance from the MLSW and when she applied, she did not submit the Certificate issued by the Centre for Social Assistance.*
>
> *[...] The claimant was recognized the right to a pension of Civil Invalids and therefore she could not receive social assistance and have the status of a social case, however the court considers that this fact does not affect the eligibility of the claimant because in concrete competition, the apartments were dedicated for cases under social care and not for the war invalids [...]."*

21. On an unspecified date, the Applicant filed an appeal against the Judgment of the Basic Court in Prishtina, claiming that the factual situation has been incompletely and incorrectly determined and the substantial and procedural provisions have been violated.

22. On 7 October 2014, the Court of Appeal of Kosovo-Administrative Matters Department, by Judgment AA. no. 327/2014, rejected the Applicant's appeal as ungrounded and upheld Judgment A. No. 1126/2012, of the Basic Court in Prishtina- Administrative Matters Department, of 3 June 2014. This court *inter alia* reasoned that there is no evidence that the Applicant at the time of application, was a resident of Prishtina Municipality at least 5 (five) years as required by regulation, and the latter was not a beneficiary of social assistance but she was a beneficiary of disability pension as civil invalid of war.

23. Against the Judgment of the Court of Appeal, on an unspecified date the Applicant submitted a request for revision to the Supreme Court of Kosovo.

24. On 11 December 2014, the Supreme Court of Kosovo, by Decision Rev. A. no. 16/2014, rejected as inadmissible the Applicant's revision, with the reasoning that against final decision of the second instance in administrative matters, a party may only file a request for extraordinary reconsideration of a decision, not a request for revision.

25. On an unspecified date, the Applicant filed with the Supreme Court a request for extraordinary reconsideration of Judgment AA. no. 327/2014, of the Court of Appeal of Kosovo, of 7 October 2014, due to violations of substantive and procedural provisions.

26. On 27 February 2015, the Supreme Court of Kosovo by Judgment ARJ-UZVP. no. 4/2015, rejected as ungrounded the Applicant's request for extraordinary reconsideration. In this decision, the court reasons among other that:

> *"[...] on the application date, the claimant has no evidence that she was a resident of MA Prishtina, at least last 5 years and also the latter was not a beneficiary of social assistance."*

Applicant's allegations

27. The Applicant alleges that Judgment ARJ-UZVP. no. 4/2015, of the Supreme Court of Kosovo, of 27 February 2015, has violated her constitutional rights. In fact, the Applicant has not specified any concrete provision of the Constitution which she claims to have been violated, but from the circumstances of the case it is assumed that it is about the allegation for violation of the right to a fair trial, guaranteed by Article 31 of the Constitution.

28. Moreover, the Applicant requests the following*: "I request an apartment be allocated to me for cases under social care-civil victims of war because I'm an invalid, unemployed, unmarried and I support my father 86 years old, ill and we have been living at the house of our cousins in Prishtina since 2000".*

Assessment of the Admissibility of the Referral

29. In order to be able to examine the Applicant's Referral, the Court first assesses whether the admissibility requirements laid down in the

Constitution and further specified in the Law and Rule of Procedure have been fulfilled.

30. In this regard, 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".

31. In addition, 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".

32. Furthermore, the Court in this case refers to Rule 36 (1) (b) of the Rules of Procedure:

"The Court may consider a referral if:
[...]

b) *all effective remedies that are available under the law against the judgment or decision challenged have been exhausted,*

[...]."

33. In the present case, the Court notes that the Applicant has exhausted all effective legal remedies available under the applicable law, and that the challenged decision of the Supreme Court is the last decision in the Applicant's case, therefore in this regard the Applicant is an authorized party.

34. In addition, 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 [...]".

35. Moreover, the Court takes into account Rules 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure, which provides that:

"(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare 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;

(d) the Applicant does not sufficiently substantiate his claim."

36. Taking this into account, the Court considers that the fact that the Applicant is not satisfied with the challenged decision does not mean that this decision violates her constitutional rights.

37. In this regard, the Court reiterates that it is not its task to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case *Garcia Ruiz vs. Spain,* no. 30544/96, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

38. The mandate of the Constitutional Court in respect of the decisions of the regular courts and of other public authorities, is only the review and assessment whether the evidence has been presented in a correct manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, case *Edwards vs. the United Kingdom*, no. 13071/87, Report of the European Commission on Human Rights, adopted on 10 July 1991).

39. Based on the Applicant's case file, the Court notes that the reasoning given in the challenged decision is clear, and viewed in their entirety, the proceedings before the regular courts have not been unfair or arbitrary (*mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR. Decision of 30 June 2009).

40. Accordingly, the Court considers that the Applicant did not substantiate her allegations and has not submitted any *prima facie* evidence that would justify such allegations of violation of the rights guaranteed by the Constitution.

41. For the reasons mentioned above, the Court considers that the facts presented by the Applicant do not in any way justify her allegation of a violation of the constitutional rights, and the Applicant has not sufficiently substantiated how and why the Judgment of the Supreme Court violated her rights guaranteed by the Constitution.

42. Therefore, the Court concludes that the Applicant's Referral does not meet the procedural admissibility requirements, because it is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 .7 of the Constitution, Article 20 of the Law and Rule 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure, on 25 September 2015, 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
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI08/15, Applicant Haki Hajdari - Constitutional Review of Judgment of the Court of Appeal of the Republic of Kosovo, PAKR 966/2012, of 11 September 2013

KI08/15, Resolution on Inadmissibility of 6 July 2015, published on 30 September 2015

Keywords: *Individual Referral, out of time referral, war crimes, civilian population, imprisonment sentence, right to fair and impartial trial, judicial protection of rights*

The Applicant was sentenced by the regular courts for war crimes against civilian population to 6 (six) years of imprisonment. The Applicant filed complaint with the Constitutional Court, alleging violation of the right to fair and impartial trial, because his evidence was disregarded by the regular courts.

The Constitutional Court noted that he Applicant filed his referral after the expiry of legal time limit of 4 (four) months. The Referral was declared inadmissible as out of time, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI08/15
Applicant
Haki Hajdari
Constitutional Review of Judgment of the Court of Appeal of the Republic of Kosovo, PAKR 966/2012, of 11 September 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Haki Hajdari (hereinafter the "Applicant"), residing in Skenderaj.

Challenged decisions

2. The Applicant challenges the following judgments: Judgment of the Supreme Court, Pml. KZZ 1/2014, of 7 May 2014; Judgment of the Court of Appeals of Kosovo, PAKR 966/2012, of 11 September 2013; and Judgment of the District Court in Mitrovica, P. no. 45/2010, of 29 July 2011. While, the judgment of the District Court was served on the Applicant on 30 January 2012, the date of services of other judgments are unknown.

Subject matter

3. The subject matter is the constitutional review of three above-mentioned challenged judgments that were, according to the Applicant, all adopted in breach of Article 31 of the Constitution [Right to Fair and Impartial Trial], Article 54 of the Constitution [Judicial Protection of Rights] and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (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 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 26 January 2015, the Constitutional Court of the Republic of Kosovo (hereinafter the "Court") received the referral submitted by the Applicant. It appears that the Applicant sent his referral *via* post office in Skënderaj on 5 August 2014.

6. On 9 February 2015, the President of the Court by Decision No.GJR.KI08/15 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH.KI08/15 appointed the Review Panel composed of judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

7. On 16 March 2015, the Applicant was notified of the registration of the Referral.

8. On 26 June 2015, the mandate of Judge Kadri Kryeziu ended. On 1 July 2015, the President of the Court by Decision No. KSH.KI08/15 appointed Judge Ivan Čukalović as member of the Review Panel instead of Judge Kadri Kryeziu.

9. On 6 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 29 July 2011, the District Court in Mitrovica found the Applicant guilty for one count of War crimes against Civilian Population pursuant to Articles 22 and 142 of the Criminal Code SFRY and in conjunction with Common Article 3 Geneva Convention and Articles 4 and 5(1) Additional Protocol II (torture of a detained civilian). He was sentenced to 6 years of imprisonment. Furthermore, he was acquitted on one count of War Crimes against the Civilian Population. There were also four other co-accused who were found guilty by the same court on four counts of War Crimes against the Civilian Population.

11. The Applicant lodged a timely appeal against the judgment of 29 July 2011. He argued that the District Court, *inter alia*, had violated the norms of procedural law and erroneously and incompletely determined the factual situation. According to the Applicant, the District court did not give reasons, why it gave greater credibility to some evidence over the credibility other evidence as it related to some witness statements.

12. The other 4 co-accused also lodged their appeals against the judgment of 29 July 2011.

13. On 11 September 2013, the Court of Appeal adopted the Judgment, PAKR 966/2012 and rejected the Applicant's appeal as unfounded.

14. The Court of Appeal did not agree with the Applicant's submissions relating to the alleged violations of procedural law, in particular relating to the witness statements and the lack of reasoning in the judgment.

15. The Court of Appeal also addressed the claim made by the Applicant (and other 4 co-accused) that the District Court had established the factual situation wrongfully and incompletely. It stated as follows: "*the Court of Appeal[s] does not agree with such criticism and finds that the Appellants are targeting the judgment on the assessment of the evidence without any reasonable arguments. It is the prerogative of the trial panels to evaluate the evidence which they learnt first-hand during the main trial…".*

16. While the co-accused filed requests for protection of legality in January 2014, the Applicant did not do so.

17. On 7 May 2014, the Supreme Court adopted the Judgment (Pml. Kzz 1/2014) rejecting requests for protection of legality filed for two of the co-accused and partially approving the request for one of them.

Applicant's allegations

18. The Applicant alleges that "*in all stages of the procedure was challenged the jurisdiction or the territorial competence-the applicability of the criminal law of SFRY, outside the territory-the state border of former SFRY for the alleged criminal offences in the territory of another state (in Albania)….and whether the applicability of the international law, the Geneva Convention has legal ground in the state that is not involved in the war or in the armed conflict…*"

19. The Applicant further alleges that the first instance judgment was adopted in breach of right to fair trial since his evidence of defense was consistently disregarded.

20. He also argues "*that the First instance judgment and Judgment of Appeal…acted contrary to Article 31 of the Constitution… [based] only on one statement given by witness N. although it was in full contradiction with the statements of other witnesses…*"

21. The Applicant also alleged the following, "*Based on the second instance judgment and that of the Supreme Court we consider that there is considerable doubt regarding the accuracy of the decisive facts, determined in the decisions against which we file the referral for violation of the Constitution …*"

22. Finally, the Applicant alleges that the Supreme Court erred in " *assessment in conclusion…At the same time it did not assess at all the jurisdiction-competences of the Kosovo courts…"*

Admissibility of the Referral

23. The Applicant complains that the challenged decisions were adopted in breach of Article 31 of the Constitution and Article 6 of the ECHR.

24. Article 31 of the Constitution, insofar as it is relevant, reads as follows:

> *"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
> *4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence."*

25. Article 6 of the ECHR, insofar relevant reads as follows:

> *"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…*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*
>
> > *(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"*

26. The Court notes that to be able to adjudicate upon the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and further specified in the 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. The Court recalls that the Applicant challenges the judgment of the Supreme Court of 7 May2014 (Pml. Kzz 1/2014).

29. The Court notes the Applicant did not use the opportunity provided in Article 418 of the Criminal Procedure Code to submit to the Supreme Court a request for protection of legality.

30. Thus, the Supreme Court judgment was adopted based on the request for protection of legality of three other co-accuseds who did exercise their legal right to file for protection of legality.

31. Therefore, the Court finds that the Applicant cannot argue that his rights to fair trial have been violated by the Supreme Court judgment in question, when he was not a party to the aforementioned proceedings.

32. As regards to the Applicant's complaints regarding the judgments of the Court of Appeal and District Court in Mitrovica the last judgment that was adopted in the Applicant's case was the judgment of the Court of Appeal on 11 September 2013 (PAKR 966/2012).

33. The Court further notes that majority of the Applicant's complaints were related to the Court of Appeal and the first instance judgment, particularly the alleged erroneous or incomplete determination of the factual situation and violation of right to fair trial in that respect.

34. In this respect the Court recalls 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 (...)".*

35. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provide:

> *"(1) The Court may only deal with Referrals if:*
>
> ...
>
> *c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant…".*

36. Based on the case file, the Court finds that the Applicant filed his referral on 5 August 2014, while the last decision, PAKR 966/2012, of the Court of Appeal was adopted on 11 September 2013. It is not known when the Applicant was served with this judgment; however the date in question was certainly before January 2014 when the other co-accused submitted their requests for protection of legality.

37. Consequently, it is clear that the Applicant filed his referral with this Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) c) of the Rules of Procedure.

38. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) c) 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)".

39. Therefore, the Court concludes that the Referral is filed 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) c) of the Rules of Procedure, on 6 July 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI33/15, Applicant Mihane Ismajli - Constitutional review of the Judgment, SCEL-11-0065-C0068 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters, dated 13 May 2014

KI33/15, Resolution on Inadmissibility of 4 September 2015, published on 30 September 2015

Keywords: *Individual referral, out of time referral, the process of privatization, equality before the law*

The Special Chamber of the Supreme Court rejected the appeal of the Applicant for inclusion in the final list of employees entitled to benefit from the sale of a socially owned enterprise. The Applicant filed a complaint with the Constitutional Court alleging a violation of the principle of equality before the law.

The Constitutional Court noted that the Applicant submitted the Referral to the Court after the expiry of legal deadline of 4 (four) months, as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI33/15
Applicant
Mihane Ismajli
Constitutional Review of the Judgment, SCEL-11-0065-C0068 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters, dated 13 May 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Ms. Mihane Ismajli residing in Gjilan (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment SCEL-11-0065-C0068of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters (hereinafter, the Specialized Panel of the SCSC) of 13 May 2014.

3. The challenged decision was served on the Applicant on 27 October 2014.

Subject matter

4. The subject matter is the request for constitutional review of the challenged decision which has allegedly violated the Applicant's right

guaranteed by Article 24 [Equality Before the Law] paragraph 1 of the Constitution of the Republic of Kosovo (hereafter: the Constitution).

Legal basis

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

Proceedings before the Constitutional Court

6. On 13 March 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 21 April 2015 the President of the Court by Decision, GJR. KI33/15 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI33/15 appointed the Review Panel composed of Judges, Altay Suroy (presiding), Enver Hasani and Arta Rama-Hajrizi.

8. On 28 April 2015 the Court notified the Applicant of the registration of the Referral and requested that she provides some additional information, namely to clarify under which name the Referral was filed; which is the challenged decision and which is the last decision.

9. On 7 May 2015 the Applicant submitted the requested information to the Court.

10. On 14 May 2015 the Court notified the Specialized Panel of the SCSC of the registration of the Referral and sent a copy of it to them. In addition, the Court requested that they file a copy of receipt indicating the date when the challenged decision was served on the Applicant.

11. On 25 May 2015 the Specialized Panel of the SCSC submitted the requested information to the Court.

12. On 1 July 2015 the President of the Court, by Decision, GJR. KI33/15, replaced Judge Enver Hasani as a member of the Review Panel, and in his place appointed Judge Ivan Čukalović.

13. On 3 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

14. The Applicant was employed as Legal Clerk at the Socially Owned Enterprise "Integji", latter known as "Textile Industry Integji", in Gjilan (hereinafter: SOE Integji).

15. On 2 March 2006, the Kosovo Privatization Agency (hereinafter: KPA) which had authority over the SOE Integji, decided to sell it.

16. The KPA then established who is eligible to benefit from the 20% of the proceeds of the sale of the enterprise by publishing a final list of employees who are entitled to such benefits. The Applicant was not included in that final list.

17. On 2 December 2011, the Applicant filed a complaint against KPA with the Specialized Panel of the SCSC claiming that she should have been included in the final list as she was employed by the SOE Integji at the time of the privatization.

18. On 13 May 2014 the Specialized Panel of the SCSC (Judgment, SCEL-11-0065-C0068) dismissed the complaint of the Applicant by holding that:

    "[...] The claim is admissible, but not grounded.

    [...] The complainant [Applicant], who was not on the payroll of the company at the time of privatization, alleged that she returned to an employment with the SOE as an employee after the war until she was not assigned work anymore, all staff having been sent on "unpaid leave".
    [...] the inclusion of former employees does not extend to those who had actually – regardless of a formal termination of the labour contract – not been employees in the relevant point in time, which was the moment of the privatization. [...] Therefore the fact that the Complainant was not employed by the SOE in the relevant moment of privatization was not alleged, let alone proven, to have been based on discriminatory reasons [...] Hence, the Complainant is not eligible to the list of those persons entitled to the 20% share of the spin-off of the SOE [...]."

19. The Applicant has presented to the Court a copy of a text intended to appeal the challenged decision with the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters (hereinafter: the Appellate Panel of the SCSC).

Applicant's allegations

20. The Applicant alleges that the KPA and the Specialized Panel of the SCSC violated her right to equality before the law as guaranteed by Article 24 of the Constitution.

21. In regards to this allegation, the Applicant claims that *"[...] the employees who had the same employment status have been treated differently when it came to the distribution of the 20%. For some employees the principle of legality was taken into account whereas for others not [...]."*

22. Furthermore, the Applicant states that *"[...] when the final list of the employees that were entitled to benefit from the 20% was published [...], I was not part of that list, whereas part of it were even some employees who have not showed up at work since June 1999 [...]."*

23. The Applicant concludes by requesting the following from the Court:

    "[...] to approve my request and to oblige the respondent party, respectively the Kosovo Agency of Privatization to acknowledge my right to benefit from the distribution of the 20% following the privatization of the enterprise [...]."

Admissibility of the Referral

24. The Court examines whether the Applicant has met the admissibility requirements which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

25. In this respect, the Court refers to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure which provide:

    Article 49 [Deadlines] of the Law

    "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. [...]"

    Rule 36 (1) (c) of the Rules of Procedure

    "(1) The Court may consider a referral if:

    [...]

> *(c) 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. The Court notes that the Applicant challenges the Judgment (SCEL-11-0065-C0068, of 13 May 2015) of the Specialized Panel of the SCSC by claiming that this is the final decision in her case. The Applicant had further confirmed the latter statement when she provided additional information in respect to clarifications requested by the Court on which is the last decision and which is challenged decision.

27. In this respect, the Court notes that the Applicant filed the Referral on 13 March 2015. She claimed that she was served with the challenged decision on 10 January 2015.

28. However, the Court observes that the Applicant was served with the challenged decision on 27 October 2014. This evidence was submitted by the Specialized Panel of the SCSC following the request of the Court for a copy of the receipt indicating the date when the Applicant was served with the challenged decision. The Court had asked for such evidence following the Applicant's statement that she could not provide it.

29. Considering the above mentioned facts, it results that the Applicant submitted the Referral to the Court after the expiry of legal deadline of four months, as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

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

31. Nevertheless, as stated above, the Court also notes that the Applicant has presented a copy of a text intended to appeal the challenged decision. The copy does not have any registration number nor any attribute to prove that it has been submitted.

32. In this regard, assuming that the Applicant has submitted the appeal with the Appellate Panel of the SCSC, the Referral would be premature as it is still pending.

33. The Court cannot take into account the allegations of the Applicant that her right to equality before the law as guaranteed by the Constitution has been violated by the challenged decision without the Applicant first exhausting all effective legal remedies and without fulfilling other procedural requirements for filling a Referral.

34. The Court reiterates that the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in regular proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of fundamental rights.

35. The rationale for such exhaustion rule is to afford the concerned authorities, 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 shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no.25803/94, Decision of 28 July 1999).

36. Therefore, the Court considers that in case the Applicant has filed an appeal with the Appellate Panel of the SCSC, the Referral would be premature as the Applicant's proceedings following her appeal have not been concluded.

37. For the foregoing reasons, it results that the Referral is out of time and must be declared inadmissible pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rule 36(1) (c) of the Rules of Procedure, on 4 September 2015, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Snezhana Botusharova

President of the Constitutional Court
Arta Rama-Hajrizi

KI185/14, Applicant Zoran Kolić - Constitutional review of Judgment PML 125/14, of the Supreme Court of the Republic of Kosovo, of 8 July 2014

KI185/14, Resolution on Inadmissibility of 8 July 2015, published on 20 October 2015

Keywords: *Individual referral, manifestly ill-founded referral, criminal proceedings, imprisonment sentence, the right to fair and impartial trial*

The Supreme Court rejected as ungrounded the request for protection of legality of the Applicant regarding the imprisonment sentence. The Applicant filed referral with the Constitutional Court alleging violations of the right to fair and impartial trial.

The Constitutional Court found that the Applicant has not accurately clarified how and why such a decision of the Supreme Court violates his rights and freedoms he claims to have allegedly been breached and the Applicant's claims of a violation of his rights and freedoms under the Constitution, are unsubstantiated and not proven. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 29 of the Law and Rule 36 (2) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI185/14
Applicant
Zoran Kolić
Constitutional review of Judgment of the Supreme Court of the Republic of Kosovo, PML 125/14, dated 8 July 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Zoran Kolić from Lipjan (hereinafter, the Applicant), who is represented by Mr. Miodrag Brkljać, a lawyer practicing in Mitrovica.

Challenged decisions

2. The Applicant challenges Judgment of the Supreme Court, PML 125/14, of 8 July 2014, which rejected his requests for protection of legality. The Judgment was served on the Applicant on 20 August 2014.

Subject matter

3. The subject matter concerns the constitutional review of the challenged decision, which allegedly violated his right to a fair trial guaranteed by Article31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) as well as Articles 6 [Right to a fair trial] (1) of the European Convention on Human Rights (hereinafter, the ECHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4. The Applicant also requests that the Court, *"pursuant to Article 39 of the Rules of Procedure of the Constitutional Court holds a public hearing because I consider that this is necessary due to the clarification of evidences"*.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 [Processing referrals] 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 of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 22 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 13 January 2015, 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 30 January 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 29 June 2015, the President of the Court, by Decision no. KSH. KI185/14, appointed Deputy-President Ivan Čukalović as member of the Review Panel instead of Judge Kadri Kryeziu, whose mandate at the Constitutional Court ended on 26 June 2015.

10. On 8 July 2015, the Review Panel considered the Report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 11 May 2012, the District Court in Prishtina found the Applicant guilty of having committed criminal offenses and sentenced him to a punishment of imprisonment and a fine.

12. On 25 September 2013, the Court of Appeals (Decision PAKR 1121/12) partially approved the appeals submitted by the Applicant, amending the Judgment of the District Court by joining two criminal offences in one.

13. Thereupon, on 8 May 2014, the defense counsels of the Applicant submitted requests for protection of legality to the Supreme Court. The Applicant also submitted a request of his own.

14. The two defense counsels and the Applicant argued *"a number of reasons have been presented by the defense counsels and the accused (...), which pertain only to the factual assessment of the case"*.

15. In fact, the defense grounded the appeal on that *"the evidences are not qualified as war crimes; there were no evidences of co-perpetration: the Judgment is grounded on unacceptable evidences and the first instance court exceeded the indictment*".

16. On 24 June 2014, the State Prosecutor considered that the submissions of the defense were not grounded and that the requests for protection of legality should be rejected.

17. On 8 July 2014, the Supreme Court (Decision PML 125/2014) rejected the requests for the protection of legality of the Applicant and his defense counsels as not grounded and confirmed the judgments of the lower courts.

18. The Supreme Court reminded the defense counsels and the accused that the request for the protection of the legality, pursuant to paragraph 2 of Article 432 of the CPCK, is not available *"when grounded on the 'erroneous or incomplete finding of the factual situation'"* and that *"it must not be used as an indirect method of further appealing"*.

19. The Supreme Court considered that *"every submission by the defense counsels or the accused that are related only to the finding of the factual situation is not taken into consideration*". In addition, the Supreme Court *"did not find any violation of the criminal or procedural law"* in relation to the other reasons submitted by the defense.

20. Finally, the Supreme Court concluded that *"the Judgment of the Court of Appeals pertaining to this is well reasoned, detailed and achieves a just result";* that there was no *"reason to repeat the findings of the Court of Appeals*" and "*it fully agrees with the reasoning rendered by the appellate panel"*.

Applicant's allegations

21. The Applicant claims that the challenged decisions allegedly violated his right to a fair trial, as guaranteed by Article 6 [Right to a fair trial] of the ECHR and by Article 31 [Right to Fair and Impartial Trial] of the Constitution.

22. The Applicant alleges that his right to a fair trial has been violated, *"because of the manner how these trials were conducted"*.

23. In fact, the Applicant further alleges that *"completely untrustworthy, unreliable and inconsistent evidences of no relevance or importance were assessed as sufficient to render a decision pertaining to the guilt of a completely innocent person"*.

24. The Applicant further argues that the principle of presumption of innocence has been drastically violated and that the Constitutional Court must confirm that principle.

25. The Applicant also complains that, during his detention, he was marked in such a way that anyone knew that he was a war criminal. As a result, he suffered from serious psychological traumas which hindered him to concentrate on his defense for the upcoming trials. He considers that the described action is contrary to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

26. The Applicant finally requests the Court *"to confirm that the convicted was subjected to the violation of the fair trial as well as other human rights provided pursuant to the Constitution"*.

Admissibility of the Referral

27. The Court first has to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and as further specified by the Law and Rules of Procedure.

28. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which stipulates:

> *"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".*

29. The Court notes that the Applicant has sought to protect his rights before the District Court and the Court of Appeals and filed a request for protection of legality with the Supreme Court. He, thus, must be considered having exhausted all available legal remedies provided by Kosovo law.

30. In addition, Article 49 [Deadlines] 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".*

31. In this respect, the Court notes that the last day of his four-month period fell on Saturday, 20 December. However, Rule 27 (f) of the Rules of Procedure foresees that *"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"*. Therefore, the Applicant could validly submit his Referral on Monday, 22 December.

32. Consequently, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies afforded to him by applicable law and that he timely submitted the Referral to the Court.

33. However, the Court also must take into account Article 48 [Accuracy of the Referral] of the Law and Rule 36 [Admissibility Criteria] of the Rules of Procedure.

34. Article 48 of the Law provides as follows:

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

35. Rule 36 of the Rules of Procedure foresees as follows:

> *"(1) The Court may consider a referral if: (d) the referral is prima facie justified or not manifestly ill-founded".*

"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that: [...] d) the Applicant does not sufficiently substantiate his claim".

36. The Applicant alleges that the challenged Decision, which is in relation with Decision P 408/11 of the District Court in Prishtina of 11 May 2012 and Decision PAKR 1121/12 of the Court of Appeals of 25 September 2013, has violated his right to a fair and impartial trial as guaranteed by the Constitution and the ECHR.

37. The Applicant states that the District Court and the Court of Appeals had wrongly considered that the completely untrustworthy and unreliable evidence was sufficient to find him guilty.

38. In that 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 courts or other public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

39. Therefore, the Court cannot act as a court of fourth instance in respect of decisions taken by the regular courts or other public authorities, since it is their role, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

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

41. In this respect, the Court notes that the Applicant was assisted by his defense counsels in the proceedings and that the courts carefully looked at all the evidence and thoroughly reasoned their decisions.

42. Furthermore, the Supreme Court considered that it could not take into account the requests for protection of legality relating to the factual situation and it could not find a violation of the criminal or procedural law with respect to other reasons submitted by the defense.

43. Moreover, the Supreme Court concluded that the judgment of the Court of Appeals was well-reasoned, detailed and achieved a just result and fully agreed with the reasoning rendered by that court.

44. In these circumstances, the Constitutional Court considers that the proceedings before the District Court, the Court of Appeals and the Supreme Court have been fair and well-conducted (See, *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009) and that the Applicant has not specified how the articles of the Constitution referred to by him, were violated as required by Article 113.7 of the Constitution and Article 48 of the Law.

45. Moreover, the Court notes that the Supreme Court rejected the Applicant's request for the protection of legality, because, pursuant to paragraph 2 of Article 432 of the CPCK, such a request is not permissible *"when grounded on the 'erroneous or incomplete finding of the factual situation"*.

46. The Court considers that the Applicant has not accurately clarified how and why such a decision of the Supreme Court violates his rights and freedoms he claims to have allegedly been breached.

47. In addition, the Applicant has not built and proved a case in relation to "*any violation of the criminal or procedural law"* submitted by him or his defense counsels to the Supreme Court.

48. Furthermore, the Court recalls that the Applicant claims that he was marked as a war criminal during his detention which hindered him to concentrate on the preparation of his defense.

49. However, the Court notes that the Applicant did not show that he has raised that allegation before the regular courts or that these circumstances prevented him to prepare his defence in the criminal proceedings.

50. Therefore, the Court considers that the Applicant has not substantiated the allegation on the ill treatment he allegedly has endured while in detention and has not submitted any evidence which could prove his claim.

51. In sum, the Applicant's claims of a violation of his rights and freedoms under the Constitution and the ECHR are unsubstantiated and not proven and, thus, are manifestly ill-founded.

52. In addition, the Applicant also requested that, pursuant to Rule 39 [Right to Hearing and Waiver] of the Rules of Procedure, the Court should hold a public hearing in order to clarify the evidence.

53. In that respect, the Court considers that the request of the Applicant to hold a public hearing does not meet any of the conditions foreseen by Rule 39 [Right to Hearing and Waiver] of the Rules of Procedure.

54. Moreover, holding a public hearing in order to clarify the evidence of the case would fall under the jurisdiction of a "fourth instance court." As said above, the Constitutional Court is not a "fourth instance court."

55. Finally, the Court has just concluded that the Referral is inadmissible as manifestly ill-founded. Thus, the Court takes into account that Rule 39 of the Rules of Procedure foresees that "*only referrals determined to be admissible may be granted a hearing before the Court*." Therefore, the Applicant's request to hold a public hearing is rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 29 of the Law and Rule 36 (1) (d) and (2) and Rule 56 of the Rules of Procedure, on 8 July 2015, unanimously,

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI46/15, Applicant Zejna Qosaj - Constitutional review of Judgment Rev. no. 17/2015 of the Supreme Court of the Republic of Kosovo, of 4 February 2014

KI46/15, Resolution on Inadmissibility of 9 October 2015, published on 20 October 2015

Keywords: *Individual referral, manifestly ill-founded referral, passive legitimacy, termination of employment relationship, the right to work and exercise profession, judicial protection of rights, the right to fair and impartial trial*

The Supreme Court rejected as ungrounded the request for revision of the Applicant, regarding the termination of employment relationship because the respondent did not have passive legitimacy. The Applicant filed complaint with the Constitutional Court alleging violations of the right to judicial protection and the right to work.

The Constitutional Court concluded that the Applicant's allegation for violation of this right does not constitute arguable constitutional basis for violation of this specific provision, due to the fact that the Applicant was given access to the court and judicial protection of her rights throughout the trial, in all court instances. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI46/15
Applicant
Zejna Qosaj
Request for constitutional review of Judgment Rev. no. 17/2015 of the Supreme Court of the Republic of Kosovo, of 4 February 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Ms. Zejna Qosaj, with permanent residence in Prishtina, who is represented by Mr. Ali Qosaj, a lawyer.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 17/2015 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 4 February 2015, by which her revision was rejected as ungrounded, because the responding party did not have passive legitimacy in this legal matter.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment Rev. no. 17/2015, due to alleged violations of the rights guaranteed by Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 17 April 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 June 2015 the President of the Court by Decision no. GJR. KI46/15 appointed Judge Robert Carolan as Judge Rapporteur and by Decision no. KSH. KI46/15 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu (member) and Bekim Sejdiu (member).

7. On 15 June 2015 the Court informed the Applicant about the registration of Referral and submitted a copy of the Referral to the Supreme Court.

8. On 10 September 2015 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. Before 1990 the Applicant worked as a lawyer in the Internal Clinic of Prishtina Hospital, which was subsequently named as Labor Organization of the Faculty of Medicine of the University of Prishtina with integral clinics (hereinafter: Employer).

10. On 23 September 1990 the Employer rendered a decision (Decision no. 183) to terminate the Applicant's employment relationship, because it considered that she disregarded her work duties.

11. On 4 December 1990 the Applicant filed a claim with the Basic Court of the Associated Labor in Prishtina against Decision no. 183 on termination of employment relationship, requesting that the abovementioned decision is annulled as unlawful.

12. Due to circumstances of war, the Applicant's case was transferred for trial to Kragujevac of the Republic of Serbia. However, being unable to take part in the court hearings, her dispute was not resolved. After the

end of the war, the Applicant filed a statement of claim with the Municipal Court in Prishtina against the University Clinical Center of Kosovo (hereinafter: UCCK), considering that the UCCK is the successor of the Employer.

13. On 27 December 2012 the Municipal Court in Prishtina (Judgment C. no. 1042/10) rejected the Applicant's statement of claim with the reasoning that the UCCK has no passive legitimacy in this legal matter, as it was established and started to function from June 1999, respectively, from the establishment of the Provisional Institutions of Self-Government in Kosovo.

14. The Applicant filed an appeal against this judgment with the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals), due to essential violations of procedural provisions, erroneous and incomplete determination of factual situation and erroneous application of substantive law.

15. On 17 July 2014 the Court of Appeals (Judgment Ac. No. 633/2013) rejected the Applicant's appeal as ungrounded and upheld Judgment C. no. 1042/10 of the Municipal Court in Prishtina, in its entirety.

16. The Applicant filed a request for revision against this judgment with the Supreme Court, within the legal deadline.

17. On 4 February 2015 the Supreme Court (Judgment Rev. no. 17/2015) rejected as ungrounded the revision filed by the Applicant, upholding the decisions of the lower instance courts.

18. In addition, the Supreme Court considered that the appealed judgment does not contain flaws that would put in question the legality of judgment, challenged by revision, as to the application of the substantive law. The Supreme Court also considered that the UCCK in this case had no passive legitimacy, namely it is not a party to the legal material relationship. Furthermore, in the reasoning is stated that the UCCK is a legal entity established by the Government of Kosovo, namely the Ministry of Health, which is operational as of June 1999.

Applicant's allegations

19. The Applicant alleges that by the challenged judgment the rights guaranteed by Article 49 of the Constitution were violated, because her status of the employee, as a lawyer, was not recognized by the UCCK.

20. Moreover, the Applicant alleges that the regular courts erred when they rejected her statement of claim. This is because at the time when her employer rendered decision to dismiss her from work, her employment relationship as a lawyer in the Internal Clinic had not been terminated, because the dispute was not resolved by the court due to war circumstances. Based on this, the Applicant alleges that by rejecting her statement of claim, the regular courts did not provide her judicial protection of rights.

Admissibility of the Referral

21. The Constitutional Court, before reviewing the Referral, it first examines whether the Applicant meets the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

22. Regarding this Referral, 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".*

23. In addition, Rule 36 (1) (d) of the Rules of Procedure provides:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded."*

24. Furthermore, Rule36 (2) of the Rules of Procedure provides:

> *"(2) The Court shall declare 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, [...]*
>
> *[...]*
>
> *(d) the Applicant does not sufficiently substantiate his claim."*

25. The Court reviewed the documents attached to the Referral, in their entirety, and notes that the challenged Judgment Rev. no. 17/2015 of the Supreme Court, of 4 February 2015, was not rendered in violation of the rights guaranteed by Article 49 of the Constitution, as claimed by the Applicant.

26. In this regard, the Court emphasizes that the meaning of Article 49 of the Constitution [Right to Work and Exercise Profession] is a standard definition that specifies the guarantees and rights to work, the employment opportunities and the provision of equal conditions without discrimination, as well as the right to choose freely the working place and exercise profession, without forced obligations. These rights are regulated by law in a specific manner.

27. In this context, the Court considers that the Applicant has not proved that the regular courts, by their decisions, violated her rights guaranteed by Article 49 of the Constitution.

28. Regarding the allegation that the Applicant was denied the right to judicial protection of rights, the Court considers that the right to address the court is a fundamental right of every individual to file a claim with the court, which has full jurisdiction to resolve a civil or criminal matter. This right, in particular, includes the right to initiate a procedure before a court and the right to have a final resolution regarding the initiated dispute.

29. In this respect, the Court considers that the Applicant's allegation for violation of this right, which is guaranteed by Article 54 of the Constitution, does not constitute arguable constitutional basis for violation of this specific provision, due to the fact that the Applicant was given access to the court and judicial protection of her rights throughout the trial, in all court instances.

30. In this regard, the Court considers that the regular courts, namely the Supreme Court, respected the principles and criteria required by Article 54 of the Constitution, for which the Applicant claims to have been violated.

31. In sum, the Court considers that the Applicant has not presented compelling and reasoned evidence showing that her allegations are grounded and constitute violation of her rights guaranteed by the Constitution (See, *Vanek v. Slovak Republic*, ECHR Decision on the admissibility of the application, no. 53363/99, of 31 May 2005).

32. Therefore, the Court, in the Applicant’s case, cannot consider that the relevant proceedings conducted before the Supreme Court were in any

way unfair or arbitrary (see, *mutatis mutandis, Shub vs. Lithuania*, ECHR Decision on the admissibility of the application, No. 17064/06, 30 June 2009).

33. For all the aforementioned reasons, the Court finds that the Applicant's Referral must be declared inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (c), 36 (2) (b) and (d) and Rule 56 (2) of the Rules of Procedure, on 9 October 2015, 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
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI29/15, Applicant Bardhyl Kameri - Constitutional review of Judgment Pml. no. 9/2015, of the Supreme Court, of 12 February 2015

KI29/15, Resolution on Inadmissibility of 10 September 2015, published on 28 October 2015

Keywords*: Individual referral, manifestly ill-founded referral, equality before the law, the rights of the accused, the principle of legality and proportionality, the right to fair and impartial trial, suspended sentence, aggravated theft*

The Supreme Court rejected as ungrounded the request for protection of legality of the Applicant regarding his suspended sentence for the criminal offense of aggravated theft. The Applicant filed complaint with the Constitutional Court alleging violations of the right to fair trial and the rights of the accused.

The Constitutional Court concluded that the Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights and the fact that the Applicant is dissatisfied with the outcome of the proceedings in his case, cannot of itself, raise an arguable claim for a breach of the Constitution. The Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI29/15
Applicant
Bardhyl Kameri
Constitutional review of Judgment Pml. no. 9/2015, of the Supreme Court, of 12 February 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Bardhyl Kameri (hereinafter: the Applicant) from the village Koretin, Municipality of Kamenica, who is represented by Mr. Halit Azemi.

Challenged Decision

2. The challenged decision is Judgment Pml. no. 9/2015 of the Supreme Court dated 12 February 2015. The challenged Judgment of the Supreme Court was served on the Applicant on 3 March 2015.

Subject Matter

3. The subject matter is the request for constitutional review of the aforementioned Judgment of the Supreme Court. The Applicant considers that the regular courts in their decisions when imposing an imprisonment sentence on him violated Article 3 and 24 [Equality Before the Law], Article 21 [General Principles], Article 30 [Rights of the Accused] Article 31 [Right to Fair and Impartial Trial] and Article 33 [The Principle of Legality and Proportionality in Criminal Cases] 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 10 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 April 2015, the President of the Court by Decision GJR. KI29/15 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision KSH. KI29/15 appointed the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Enver Hasani.

7. On 29 April 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 1 July 2015, the President by Decision GJR. KI29/15 appointed Judge Robert Carolan as Judge Rapporteur, replacing Judge Arta Rama-Hajrizi.

9. On 1 July 2015, the President, by Decision KSH. KI29/15 appointed Judge Arta Rama-Hajrizi as a member of the Review Panel, replacing Judge Enver Hasani, whose mandate with the Constitutional Court ended on 26 June 2015.

10. On 10 September 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible.

Summary of facts

11. On 19 June 2014, the Basic Court in Gjilan, Branch in Kamenica, by Judgment P. no. 193/2011, found the Applicant guilty of committing the criminal offense of aggravated theft under Article 253 par. 1 of the Criminal Code of Kosovo, and imposed on him a suspended sentence for a period of 6 (six) months .

12. On 18 August 2014, the Court of Appeal of Kosovo, acting upon the appeal of the Public Prosecutor in Gjilan, by Judgment PAI. no. 997/2014, approved the request of the Public Prosecutor relating to the decision on punishment, by imposing the measure of effective imprisonment to 6 (six) months. That Judgment further emphasized "*The Court of Appeal considers that the appealed allegations of the Prosecutor are grounded because in the present case, the mitigating circumstances have been overestimated while the aggravating circumstances were not considered at all, because the first instance court has incorrectly assessed the social danger and the consequences of the offence committed.*"

13. On 6 November 2014 the Basic Court in Gjilan, acting upon the request of the Applicant for replacement of the imprisonment sentence with an order for community service work, rendered Decision P. no. 193/11, and rejected as inadmissible the Applicant's appeal.

14. On 16 December 2014, the Court of Appeal of Kosovo, by Decision PN. no. 645/2014 rejected as ungrounded the Applicant's appeal against Decision, P. no. 193/11, of the Basic Court in Gjilan.

15. On 12 February 2015, the Supreme Court, acting upon the submitted request for protection of legality, filed by the Applicant against Decision P. no. 193/11, of the Basic Court in Gjilan, of 11 June 2014, and Decision PN. no. 645/2014, of the Court of Appeal of Kosovo, of 16 December 2014, rendered Judgment, Pml. no. 9/2015. In its Judgment the Supreme Court rejected as ungrounded the request of the Applicant. The Supreme Court held that the second instance court had sentenced him in accordance with the provisions of the law in force at the time of the Applicant's sentencing.

Applicant's allegations

16. The Applicant alleges that the sentencing court's imprisonment sentence violated Article 3 and 24 [Equality Before the Law], Article 21 [General Principles], Article 30 [Rights of the Accused] , Article 31 [Right to Fair and Impartial Trial] and Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution.

17. The Applicant requests the Court to quash the decisions of the regular courts and to remand the case for re-trial.

Admissibility of the Referral

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

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

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

20. The Court also mentions 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."*

21. The Court also refers to Rule 36 of the Rules of Procedure, which foresees:

> *„(2) The Court shall declare 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."*

22. When reviewing the Applicant's allegations regarding the erroneous application of the procedural and substantive law by the regular courts, the 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. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (see case: *Garcia Ruiz vs. Spain,* no. 30544/96, ECHR, Judgment of 21 January 1999; see also case: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility, of 16 December 2011).

23. Although the Applicant alleges that his rights were violated by erroneous determination of facts, and erroneous application of the law by regular courts, he did not indicate how these decisions have violated his constitutional rights. 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,* No. 53363/99 ECHR, Decision, of 31 May 2005).

24. The Court further reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings in his case, cannot of itself, raise an arguable claim for a breach of the Constitution (see case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, *Judgment of 26 July 2005*).

25. The Applicant was afforded numerous opportunities to present his case before the Basic Court in Gjilan, the Court of Appeal of Kosovo in Prishtina and before the Supreme Court of Kosovo.

26. As mentioned above, the Court finds that the reasoning given in the Decision P. no. 193/11, of the Basic Court in Gjilan, of 11 June 2014, Decision PN. no. 645/2014, of the Court of Appeal of Kosovo, of 16 December 2014 and Judgment, Pml. no. 9/2015, the Supreme Court of 12 February 2015 are complete and clear. The proceedings before the regular courts were not unfair or arbitrary (see case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

27. In sum, the Applicant failed to show or substantiate by evidence that his constitutional rights and freedoms have been violated by the challenged decision.

28. Based on the foregoing, the Court considers that the facts represented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant and he has not sufficiently substantiated his claim.

29. Thus, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (2) (b) of the Rules of Procedure, in the session held on 10 September 2015, 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
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI38/15, Applicant Kolë Puka - Constitutional review of Judgment PML.-KZZ. No. 170/2014 of the Supreme Court of Kosovo of 19 February 2015

KI38/15, Resolution on Inadmissibility of 11 September 2015, published on 3 November 2015

Keywords: *Individual referral, manifestly ill-founded referral, the presumption of innocence, imprisonment sentence, abuse of official position, issuance of unlawful judicial decisions, mitigating and aggravating circumstances*

The Supreme Court partially approved the request for protection of legality of the Applicant regarding his imprisonment sentence for the criminal offense of issuance of unlawful judicial decisions. The Applicant filed complaint with the Constitutional Court alleging violation of the principle of presumption of innocence.

The Constitutional Court concluded that the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances of the alleged violations, or without specifying the actions of the public authority that are contrary to fair and impartial trial, do not constitute sufficient ground to satisfy the Court that there has been a violation of the Constitution or of the Convention regarding a fair and impartial trial. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI38/15
Applicant
Kolë Puka
Request for constitutional review of Judgment PML.-KZZ. No. 170/2014 of the Supreme Court of Kosovo of 19 February 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Kolë Puka, currently serving an imprisonment sentence in Dubrava prison, who is represented by his son Mr. Driton Puka from the village Renoc, Municipality of Klina.

Challenged decision

2. The challenged decision is Judgment PML.-KZZ. No. 170/2014, of the Supreme Court of Kosovo, of 19 February 2015, which was served on the Applicant on 2 March 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which, according to the Applicant, violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), under Article 31 item 1, 3 and 5 (Right to Fair and Impartial Trial).

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law)

and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 24 March 2015, the Applicant's representative submitted the Referral to the Constitutional Court (hereinafter: the Court).

6. On 22 April 2015, the President of the Court, by Decision GJR. KI38/15, appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Bekim Sejdiu.

7. On 1 July 2015, by Decision of the President of the Court, Judge Arta Rama-Hajrizi was appointed as member to the Review Panel, replacing Kadri Kryeziu, whose mandate as a judge ended on 26 June 2015.

8. On 29 July 2015, the Court informed the Applicant about the registration of the Referral and a copy of the Referral was sent to the Supreme Court.

9. On 11 September 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral

Summary of facts

10. On 24 May 2012, the Applicant, as one of 4 (four) accused by Judgment P. no. 477/11, of the District Court in Peja, was found guilty of the criminal offence of "Abuse of Official Position or Authority", and he was punished with a sentence of 5 (five) years in prison. In addition, the Judgment also imposed the accessory punishment of "Prohibition on Exercising Public Administration or Public Service Functions" for a period of 3 (three) years.

11. The District Court, as a court of first instance, in the reasoning of the Judgment stated that it had been proven that between 12 September 2007 and 8 April 2008, in Klina, the Applicant in the capacity of a judge of the Municipal Court, together with a lawyer from Klina, prepared and executed a plan to file a submission for compensation for damage caused in a traffic accident without the knowledge or consent of the injured person. Then the Applicant, as a judge performing his official duty, issued a court decision that decided to allocate material compensation to a certain person without any

evidence to support this compensation award to the detriment of an insurance guarantee fund.

12. On 15 July 2012, the Applicant filed an appeal against the Judgment of the District Court in Peja, as mentioned above.

13. On 25 April 2013, the Court of Appeal rendered Judgment PAKR 1122/2012, which rejected the Applicant's appeal as ungrounded, while it modified *ex officio* the part of the judgment that had to do with the Applicant, by re-qualifying the criminal offense. So instead of the criminal offense of *"Abuse of Official Position or Authority"* the Applicant was found guilty of the criminal offense of *"Issuance of Unlawful Judicial Decisions."* The Court of Appeal then imposed on him the imprisonment sentence in the same duration of time as the District Court in Peja, but, by applying the most favorable law for the Applicant, it removed the accessory punishment imposed by the court of first instance.

14. The Court of Appeal, reasoned its Judgment as it follows:*"In the opinion of the Appeals Panel, contrary to the findings of the First Instance Court, a comparison of the legal elements of the criminal offences of Abusing Official Position or Authority and Issuing Unlawful Judicial Decisions leads to the conclusion that the latter is the more specific crime which subsumes the criminal offence of Abusing Official Position or Authority by application of the principle lex specialis derogate lex generali".*

15. The Court further reasoned that "*This misapplication of criminal law by the Trial Panel is detrimental to the accused because it might have influenced the determination of punishment as both criminal provisions provide for different punishments: the criminal offence of Abusing Official Position or Authority foresees a punishment of imprisonment of one to eight years whereas the criminal offence of Issuance of Unlawful Judicial Decisions foresees a punishment of six month to five years."* And *"For these reasons, the Appeals Panel modifies the Judgment of the District Court of Peja and finds the accused Kole Puka guilty for the criminal offence of Issuing Unlawful Judicial Decisions".*

16. On 4 February 2014, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo.

17. On 19 February 2015, the Supreme Court decided the Applicant's request, and after receiving the opinion from the Office of the Chief State Prosecutor it rendered Judgment, PML.-KZZ. No. 170/2014. The request for protection of legality, submitted by the Applicant, was

found partly grounded. Thus, the judgments of the District Court of Peja and of the Court of Appeal were modified in terms of the criminal sanction, so that the Applicant's punishment was reduced by six (6) months less than the original imposed sentence.

18. The Supreme Court based the modification of the Judgment primarily on the assessment of aggravating and mitigating circumstances for the Applicant by the regular courts, and in that case, among others reasoned: *"Therefore, the Supreme Court considers that the Court of Appeal has violated criminal law when imposing maximal punishment for the criminal offense by rendering unlawful judicial decision. Pursuant to Article 438 paragraph 1 sub-paragraph 1.1, the Supreme Court, agreeing with all the aggravating and mitigating circumstances mentioned in the Judgment of the Court of Appeal, modifies the judgment and determines that the sentence of four (4) years and six (months) is proportional".*

Applicant's allegations

19. The Applicant alleges that his rights guaranteed by the Constitution of Kosovo to a fair and impartial trial (Article 31 of the Constitution) have been violated because his criminal case had been unlawfully separated into five criminal cases, even though all five cases were about the same issue. The Applicant alleges that procedure resulted in a violation of Article 31.5 of the Constitution, which refers to the presumption of innocence.

20. The Applicant further alleges that the composition of the trial panel in the Supreme Court was not appointed in accordance with Law No. 03/L-053 on the jurisdiction of judges and prosecutors of EULEX.

21. The Applicant requested the Court to annul all judgments of regular courts and to remand the case for re-trial.

Assessment of the Admissibility of the Referral

22. In order 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 and further specified in the Law and the Rules of Procedure.

23. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

> *"Individuals are authorized to refer violations by public authorities of their*

individual rights and freedoms guaranteed by the Constitution, but only
after exhaustion of all legal remedies provided by law".

24. The Court also refers to Rule 36 of the Rules of Procedure of the Constitutional Court, which provides:

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

25. The Court notes that the Applicant alleges that the challenged decision violated his right to a fair and impartial trial under Article 31.1, 2 and 3 of the Constitution.

26. The Court recalls that the Constitution of Kosovo in the provisions, challenged by the Applicant, provides:

Article 31of 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.

[...]

5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.

27. In order to decide the merits of the Referral, the Court also takes into account the provisions of the Law on Courts, 2010/03-L-199, decreed on 9 August 2010, where it is provided:

Article 21, the Supreme Court

1. The Supreme Court is the highest judicial authority in Kosovo and shall have territorial jurisdiction over the entirety of the Republic of Kosovo.

[...]

and

Article 22, Competencies of the Supreme Court

1.3. defines principled attitudes and legal remedies for issues that have importance for unique application of Laws by the courts in the territory of
Kosovo;

[...]

28. By assessing the constitutionality of the challenged judgment in light of the allegations for constitutional violations and the facts that have supported these allegations, and by comparing these facts with the content of the above_ mentioned provisions, the Court holds that it has not found the arguments that the constitutional provisions have been violated. Moreover, when such allegations are of a mere legal character and not of constitutional character, and are subject of review also in the Judgment of the Supreme Court, and that court provides effective responses to those allegations this Court cannot act as a fourth instance court with respect to the correct interpretation of the law.

29. The Court recalls that the Applicant believes that the separation of a criminal case into several categories results in a substantial violation of the criminal proceedings, the criminal law and the rights of defendants. The Supreme Court in its judgment in paragraph 60 specifically rejected this argument as ungrounded.

30. Regarding the alleged unlawful composition of the Supreme Court's trial panel that ruled on the request for protection of legality, the Court notes that this issue has to do with the correct application of the law which is the exclusive competence of the regular court**s**.

31. In addition, the Supreme Court itself in its Judgment in paragraphs 50-57 in an extensive and convincing manner has explained the composition of the trial panel considering all domestic legal acts, the International Agreement with the Mission of the European Union ratified by the Law, 04 L-274, promulgated by the President on 7 May 2014, and the Vienna Convention.

32. In order to be treated as a constitutional issue in relation to Article 31 of the Constitution and Article 6 of the European Convention of Human Rights (ECHR), the composition of the judicial panel should be a clear indicator of bias in the adjudication. But in this case the bias of the trial panel has been neither challenged nor substantiated by the

Applicant. Therefore, in these circumstances, there is no proof of a violation of Article 31 of the Constitution or Article 6 of the ECHR.

33. The Court notes that the simple description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances of the alleged violations, or without specifying the actions of the public authority that are contrary to fair and impartial trial, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the Convention regarding a fair and impartial trial.

34. The Court further holds that the judgments of the regular courts, challenged by the Applicant, substantially respected the Applicant's human rights, by providing all procedural and substantive possibilities to the Applicant to be an equal and active party in all stages of the court proceedings. In addition, the Court of Appeal, specifically relied upon the case law of the ECHR and of other international courts, as well as cases from domestic case law in reviewing the Applicant's appeal.

35. In conclusion, 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. It is essential for the Court that the issues on which it decides depend on the assessment of possible violations of the Constitution and not clearly legal issues. (See, *mutatis mutandis, l.a., Akdivar v. Turkey,* 16 September 1996, R.J.D, 1996-IV, para. 65). In this case, the Applicant mainly presented allegations of legal violations, not Constitutional violations.

36. The Court notes that it is the task of the courts of regular jurisdiction to decide on the ranking of the importance of evidence and to appreciate what evidence pursuant to the correct application of the applicable law prevails. In the present case it was undoubtedly up to the Supreme Court to decide how fair is the legal stance of the first instance court or of the Court of Appeal, and to sanction this by it's final court decision.

37. It should be noted that the Constitution of Kosovo, in Article 103.2 has provided that the Supreme Court is the highest judicial authority, whereas the Law on Courts has given the authority to the Supreme Court for *"unique application of Laws by the courts in the territory of Kosovo"* and, consequently, the unification of the case law of the regular courts.

38. In this respect, the Court has not found that different reasoning of the courts of two judicial instances have resulted in violation of Article 31 of the Constitution, because the final Judgment of the Supreme Court has concluded the determination of the factual situation and of the application of legality, and the Applicant has not substantiated in any way that the challenged Judgment is an indicator of an evident arbitrariness requiring it's annulment on a constitutional basis.

39. In these circumstances, the Court could not find that the right to fair and impartial trial has been violated (See also, Resolution of the Constitutional Court, Case, KI128/12, of 12 July 2013, of the Applicant *Shaban Hoxha*, in the request for constitutional review of the Judgment Rev. no. 316/2011, of the Supreme Court of Kosovo).

40. In sum, the Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of his constitutional rights or of rights guaranteed by the ECHR. Therefore, the challenged decision did not violate the Applicant's human rights. Therefore, the Court finds that the Referral is to be declared inadmissible, as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (c), 36 (2) (b) and (d) and Rule 56 (2) of the Rules of Procedure, on 11 September 2015, 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
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI47/15 and KI48/15, Applicants Beqir Koskoviku and Mustafë Lutolli -Constitutional review of Judgment AC-II-14-0057 of the Special Chamber of the Supreme Court of Kosovo, of 12 March 2015

KI47/15 and KI48/15, Resolution on Inadmissibility of 11 September 2015, published on 4 November 2015

Keywords: *Individual referral, manifestly ill-founded referral, land consolidation, protection of property*

The Special Chamber of the Supreme Court rejected the appeal of the Applicants regarding the property right over certain surface of the consolidated land. The Applicants filed complaint with the Constitutional Court alleging violations of the right to property.

The Constitutional Court concluded that the allegations made in the Referral, the Court notes that the Applicants have only pointed out the violation of these constitutional provisions, but they have not provided any single piece of evidence as to the manner and nature of the violation, the possible circumstances in which the alleged violation occurred, and they have not explained the constitutional consequences of the alleged violations. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Cases Nos. KI47/15 and KI48/15
Applicants
Beqir Koskoviku and Mustafë Lutolli
Request for constitutional review of Judgment AC-II-14-0057 of the Special Chamber of the Supreme Court of Kosovo, of 12 March 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicants are Mr. Beqir Koskoviku from village Barileva, Municipality of Prishtina, and Mr. Mustafë Lutolli from Prishtina.

Challenged decision

2. The challenged decision is Judgment AC-II-14-0057 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo(hereinafter: the Appellate Panel of SCSC), of 12 March 2015, which was served on the Applicants on 8 April 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which according to the Applicants' allegations violated the rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) under Article 46 [Protection of Property].

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law Nr. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 17 April 2015 the Applicants submitted their Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 June 2015 the President of the Court, by Decision GJR. KI47/15, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Ivan Čukalović (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.

7. On 15 June 2015 the Court informed the first Applicant of the registration of Referral and sent a copy of the Referral to the Supreme Court.

8. On 10 September 2015 the Court informed the second Applicant of the registration of the Referral and on the same date, in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered that Referrals KI47/15 and KI48/15 are joined into a single Referral and that the Judge Rapporteur and the Review Panel in both cases (KI47/15 and KI58/15) remain the same as those assigned in Referral KI47/15.

9. On 10 September 2015 the Court informed the parties of the joinder of Referrals and sent copies of the Referrals to the Supreme Court.

10. On 11 September 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referrals.

Summary of the facts

11. On 21 March 2006 the Applicants' parents B. K. and A. L. (now deceased) filed a claim with the Special Chamber of the Supreme Court of Kosovo for recognition of the ownership right over certain parcels of land located in Fushë-Kosovë. In all further court proceedings, the status of the heir and the legitimacy of the party for representation in

proceedings regarding the interest in the parcel, which was the subject of the claim, was recognized to the Applicants.

12. The Applicants alleged that according to an agreement on the land consolidation that was concluded with AIC "Kosova Export" (hereinafter: AIC) in 1981, they received smaller surface area of land than the surface they had given to AIC, and through a lawsuit they intended to implement the agreement in its entirety, requesting to receive the rest of the surface area, which according to them, the AIC had not given to them.

13. On 24 October 2006 the SCSC by Decision SCC-06-0117 referred the case to the Municipal Court in Prishtina.

14. On 7 October 2008 the Municipal Court in Prishtina rendered Judgment C. no. 2272/06, rejecting the Applicant's statement of claim, and on that occasion, among other things, it found: "*According to the assessment of the Municipal Court, the possession for years of the immovable property in question and construction of buildings on the said immovable property does not constitute valid legal ground for acquisition of ownership right on the basis of the land consolidation, in virtue of the provision of Article 20, paragraph 2 of the Law on Basic Property – Legal Relations.*

15. The Court further reasoned: "*This way of acquisition of the ownership right on the abovementioned basis would have been admissible for the court if the claiming parties provided the court with respective decisions rendered by the competent authority on consolidation of the said immovable property. In this situation of the case, the court finds that the statement of claim of the claimants is ungrounded and as such it was rejected in its entirety.*"

16. On 22 January 2009 the Applicants jointly submitted an appeal to the District Court in Prishtina against the Judgment of the Municipal Court because of the essential violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.

17. On 8 May 2013 the Court of Appeals received the case file from the Municipal Court in Prishtina and through a submission, along with the appeal, sent the case file to the SCSC for further jurisdiction.

18. On 16 December 2014 the Specialized Panel of the SCSC, by Decision C-III-13-0323, closed the file and ordered the Office for Registration to register the appeal as a case for the Appellate Panel, which was then assigned the number AC-II -14-0057.

19. On 12 March 2015 the Appellate Panel of the SCSC, by Judgment AC-II-14-0057, rejected the Applicant's appeal as ungrounded and upheld Judgment C. no. 2272/06 of the Municipal Court in Prishtina, of 7 October 2008.

20. The Appellate Panel of SCSC by abovementioned Judgment reasoned among others: "*The Appellate Panel considers that by the appealed judgment, no procedural provisions are breached nor the factual situation is erroneously determined as it is alleged by an appeal of the appellants.*"

Applicant's allegations

21. The Applicants allege that the Judgment of the Appellate Panel of the SCSC has violated the rights guaranteed by the Constitution, and specifically the right to property, because according them, after a regular process of the land consolidation, they received less surface area of land than they had given.

22. The Applicants requested that the Court annul the Judgment of the Appellate Panel of the SCSC, and remand the case for retrial.

Admissibility of the Referral

23. In order to adjudicate the Applicants' Referral, the Court should first examine whether the party has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

24. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

25. The Court also takes into consideration Rule 36 (1) d) of the Rules of Procedure which provides:

> *"(1) The Court may consider a referral if:*
>
> *[...]*

(d) the referral is prima facie justified or not manifestly ill-founded

and Rule 36 (2) of the Rules of Procedure which provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...]

(d) the Applicant does not sufficiently substantiate his claim;

26. As mentioned above, the Court concludes that the Applicants allege that the challenged Judgment has violated his right to protection of property (Article 46 of the Constitution), which has the following content:

Article 46 [Protection of Property]

1. The right to own property is guaranteed.

2. Use of property is regulated by law in accordance with the public interest.

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

4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

5. Intellectual property is protected by law.

27. In assessing the allegations made in the Referral, the Court notes that the Applicants have only pointed out the violation of these constitutional provisions, but they have not provided any single piece

of evidence as to the manner and nature of the violation, the possible circumstances in which the alleged violation occurred, and they have not explained the constitutional consequences of the alleged violations.

28. The Court considers that the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting facts as to the way they were violated, without specifying the circumstances, without specifying and substantiating with valid facts the actions of the public authority that are contrary to constitutional norms, do not constitute sufficient grounds to convince the Court that there has been a violation of the Constitution and of the ECHR.

29. After considering the Applicants' Referral and the facts presented in the Referral, the Court finds that in all stages of the court proceedings, the Applicants' complaints have been of legality character, and that the regular courts responded in an adequate manner to these complaints. The allegations of violations of human rights that are protected by the Constitution have been raised for the first time before the Constitutional Court.

30. The Court further reiterates that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely a higher instance court. The Court, in principle, does not consider the fact whether the regular courts have correctly and completely determined the factual situation, or if, as in this case, the land consolidation was a regular process and fully implemented because it is the jurisdiction of the regular courts and in fact, the Municipal Court and the Appellate Panel of the SCSC have adequately responded to these raised allegations in the abovementioned judgments.

31. For the Court essential are the issues, on the existence of which the assessment of possible violations of the constitutional rights depends and not clearly legal issues, as were mainly the facts presented by the Applicant (See, *mutatis mutandis, i.a., Akdivar v. Turkey,* 16 September 1996, R.J.D, 1996-IV, para. 65).

32. In these circumstances, the Court does not find facts that Article 46 of the Constitution [Protection of Property] was violated or that the challenged Judgment is an indicator of an evident arbitrariness (See, Resolution on Inadmissibility of the Constitutional Court, Case KI128/12, of 12 July 2013, Applicant *Shaban Hoxha*, Request for constitutional review of Judgment Rev. no. 316/2011 of the Supreme Court of Kosovo).

33. In these circumstances, the Court finds that the facts presented by the Applicants do not in any way justify the allegation of violation of the constitutional right to protection of property and, therefore, concludes that the Referral is to be rejected as manifestly ill-founded and be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) c), 36 (2) b) and d) and 56 (2) of the Rules of Procedure, on 11 September 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Arta Rama-Hajrizi

KI79/15, Applicant Loresa Fetahu - Constitutional review of Judgment Pml. no. 83/2015 of the Supreme Court of the Republic of Kosovo, of 30 April 2015

KI79/15, Resolution on Inadmissibility of 11 September 2015, published on 4 November 2015

Keywords: *Individual referral, manifestly ill-founded referral, interim measure, non-disclosure of identity, equality before the law, the execution of the sentence, imprisonment sentence, criminal offence of robbery*

The Supreme Court rejected as ungrounded the request for protection of legality filed by the Applicant with regard to the imprisonment sentence due to the commission of the criminal offense of robbery. The Applicant filed complaint with the Constitutional Court alleging violation of the principle of equality before the law. Applicant also requested the imposition of interim measure and non-disclosure of her identity.

The Constitutional Court noted that the Applicant has not accurately clarified how and why the challenged decisions which rejected her request for protection of legality entailed a violation of her individual rights and freedoms guaranteed by the Constitution nor has she presented evidence justifying the allegation of such a violation. The Court also rejected the imposition of interim measure and the request for non-disclosure of identity. The Referral was declared inadmissible as manifestly ill-founded in accordance with Articles 27 and 47 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI79/15
Applicant
Loresa Fetahu
Constitutional review of Judgment Pml. no. 83/2015 of the Supreme Court, dated 30 April 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Miss. Loresa Fetahu, from Lupq i Poshtëm, municipality of Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Decision (Pml. no. 83/2015) of the Supreme Court of 30 April 2015, by which the Applicant's request for protection of legality was rejected. The challenged Decision was served on Applicant on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which, allegedly, violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 24, paragraph 1 and 2 [Equality Before the Law].

4. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely, to prevent the execution of the sentence against her, who, by

Judgment PKR. N0. 247/14 of the Basic Court in Prishtina of 1 October 2014 was sentenced to imprisonment of 1 (one) year.

5. In addition, the Applicant requests the Court not to disclose her identity.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Articles 27 and 47 of 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 Constitutional Court

7. On 17 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. On 29 June 2015, the President appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

9. On 10 July 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

10. On 11 September 2015, 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. On 1 October 2014, the Basic Court in Prishtina (Judgment PKR. N0. 247/14) found that the Applicant and A.C were found guilty for the criminal offence of Robbery, under Article 329, paragraph 1, in conjunction with Article 31 of the CCK and were sentenced to imprisonment for a period of one (1) year.

12. The Applicant appealed to the Court of Appeal against the Judgment of the Basic Court claiming that *"the Basic Court did not assess fairly all the circumstances which would impact the punishment to be adequate with the level of social danger of the offense and the level of criminal responsibility of the accused person"*.

13. On 26 February 2015, the Court of Appeals (Judgment PAKR.no. 18/2015) rejected as ungrounded the ap*peal of the Applicant and confirmed the Decision of the Basic Court holding that:*

> *"[…] by reviewing the challenged judgment regarding the accused Loresa Fetahu, this Court assesses that the allegations of the defense counsel for a lenient punishment are not grounded. In fact, the mitigating circumstances to which the defense counsel of the accused person refers stand, but they are not of the nature which justifies a more lenient punishment of imprisonment than the one imposed by the first instance. So, this Court assesses that the punishment imposed to accused Loresa Fetahu by the first instance court is adequate with the gravity of the criminal offense and with the level of the criminal responsibility of the accused person and it may influence in preventing her from committing any criminal offense in the future and in her rehabilitation, namely the purpose of the punishment, foreseen by the provision of Article 41 of the CCRK, may be achieved".*

14. By the same decision, the Court of Appeals modified the Judgment of the Basic Court in relation to A. C holding that:

> *"The Court of Appeals assesses that the appeal of the defense counsel of accused A.C for a lenient punishment is grounded because: the accused person is young, of a weak economic condition, has had correct behaviors during the criminal proceeding, has pleaded guilty, has expressed a deep regret for the offense committed, which she stated also in the Panel's session of this Court. Taking into account these circumstances and especially the fact that the accused person has been a victim of trafficking in human beings in a criminal case for which matter the investigations are underway, and her weak health condition, which is confirmed by the medical documents, but it was noticed also in the Panel's session - speech impediment, sight and numbness of the face, this Court assesses that the purpose of the punishment will be achieved also by the threat of punishment, therefore, it conditioned the punishment of imprisonment imposed to the accused person for a duration of one year, with the conviction that this punishment is adequate with the gravity and the social danger and that it will impact to her in the future not to commit any criminal offense".*

15. The Applicant filed a request for protection of legality with the Supreme Court against the Decisions of the Court of Appeal and Basic Court alleging *"violations of the provisions of the Criminal Procedure Code and violation of the Criminal Code to the detriment of the*

convicted person to the detriment of the accused person. Since the provisions mentioned above in this request have been violated against her, facts which have impacted the Criminal Code to be erroneously applied to her".

16. On 30 April 2015, the Supreme Court (Judgment Pml. no. 83/2015) rejected the Applicant's request for protection of legality, holding that *"the challenged judgments are clear and the enacting clause of the judgment of the first instance court contains all the elements indicating the criminal nature of the act committed, for which the convicted person was found guilty.*

Applicant's allegations

17. The Applicant alleges that the regular courts, by rejecting her request for protection of legality, have violated her rights guaranteed by the Constitution, namely rights pertaining to *"equality before the law".*

18. The Applicant alleges that *"[...] the Supreme Court by rejecting the appeal of the Applicant, while it approved the appeal of the other accused person (co-perpetrator A.C) and modified the sentence of imprisonment to a conditional sentence has violated her rights guaranteed by the Constitution".*

19. The Applicant concludes by requesting from the Court *"to ensure that all parties are treated equally and thus impose a conditional sentence also to the Applicant".*

Admissibility of the Referral

20. The Court has first to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

21. 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".

22. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

    (1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2)The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(c) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

[...]

(d) the Applicant does not sufficiently substantiate his claim.

23. The Court recalls that the Applicant challenges the Decision (PnL. no. 83/2015) of the Supreme Court, alleging that her right to equality before the law has been violated.

24. The Court notes that the Supreme Court responded on this allegation by holding that *"that there are no violations of the criminal law to the detriment of the convicted person by the second instance court upon rendering the decision on punishment, regarding the convicted person A.C, to the detriment of the convicted Loresa Fetahu, since the responsibility is individual, therefore, the punishments are also individual and the aggravating or mitigating circumstances are assessed individually for each convicted person, as the second instance court has acted in this case when it decided regarding the appeal allegations for the convicted persons...".*

25. Moreover, the Applicant has neither accurately clarified how and why the challenged decisions which rejected her request for protection of legality entailed a violation of her individual rights and freedoms guaranteed by the Constitution nor has she presented evidence justifying the allegation of such a violation.

26. 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 public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

27. The Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts

or other public authorities. It is the role of the regular courts or other public authorities, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *García Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

28. Therefore, the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of her rights under the Constitution. (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred articles of the Constitution support her claim, as required by Article 113 (7) of the Constitution and Article 48 of the Law.

29. Thus, the Court concludes that, in accordance with Rule 36 (2)(b) and (d) of the Rules of Procedure the Referral is inadmissible.

Request for Interim Measure

30. As stated above, the Applicant also requests the Court to render "*a decision on the imposition of an interim measure against the* Judgment PKR. No. 247/14 of the Basic Court in Prishtina*, whereby the commencement of execution of the sentence will be suspended [...]*".

31. As emphasized above, the Applicant has not shown a prima facie case on the admissibility of the referral. Therefore, pursuant to Rule 55 of the Rules of Procedure, the request for interim measure should be rejected as ungrounded.

Request for non-disclosure of identity

32. As to the Applicant's request for not having her identity disclosed, the Court rejects her request as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have her identity disclosed. Furthermore, the Court notes that the Applicant's identity has already been disclosed in the proceedings before the regular courts.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Articles 27 and 47 of Law, Rules 36 (2)(b) and (d), 55 (4) and (5) and 56 (2) of the Rules of Procedure, on 11 September 2015, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECR the Request for Interim Measure;

III. TO REJECT the Applicant's request for non-disclosure of her identity;

IV. TONOTIFY this Decision to the Parties;

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

VI. TO DECLARE this Decision effective immediately

Judge Rapporteur
Bekim Sejdiu

President of the Constitutional Court
Arta Rama-Hajrizi

KI44/15, Applicant Hava Bajgora, Alban Bajgora and Sylejman Bajgora - Constitutional review of Decision no. 356-65493, of the Inspection Directorate, Construction Sector in the Municipality of Prishtina, of 20 March 2015

KI44/15, Resolution on Inadmissibility of 10 September 2015, published on 9 November 2015

Keywords: *Individual referral, sale-purchase contract, non-exhaustion of legal remedies, equality before the law, judicial protection of rights, protection of property, public health*

The Inspection Directorate in Prishtina, rendered decision to demolish the building owned by the Applicants, because of danger to public health. The Applicants filed complaint with the Constitutional Court alleging violation of the principle of equality before the law and the right to property.

The Constitutional Court concluded that there are other legal remedies which the Applicants may exhaust regarding their appeals, and it is their responsibility, to use all effective legal remedies before submitting a Referral for constitutional review of any act, of any public authority before the Constitutional Court. The Referral was declared inadmissible due to non-exhaustion of all available legal remedies, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI44/15
Applicant
Hava Bajgora, Alban Bajgora and Sylejman Bajgora
Constitutional review of Decision no. 356-65493, of the Inspection Directorate, Construction Sector in the Municipality of Prishtina,
of 20 March 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicants are: Ms. Hava Bajgora, Mr. Alban Bajgora and Mr. Sylejman Bajgora from Prishtina (hereinafter: the Applicants), who are represented by Mr. Fatbardh Makolli, lawyer from Prishtina.

Challenged Decision

2. The Applicants challenge Decision (no. 356-65493, of 20 March 2015) of the Inspection Directorate, Construction Sector in the Municipality of Prishtina (hereinafter: the Inspection Directorate).

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicants' rights guaranteed by Article 24 [Equality Before the Law]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property]; Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

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

Proceedings before the Constitutional Court

5. On 15 April 2015, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 June 2015, the President of the Court, by Decision no. GJR. KI44/15 appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI44/15 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 5 June 2015, the Court informed the Applicants about the registration of the Referral and requested from them to specify the last decision challenged and to submit other relevant documents regarding the case.

8. On 17 June 2015, the Applicants responded to the request of the Court.

9. On 24 June 2015, the Court sent a copy of the Referral to the Inspection Directorate.

10. On 10 September 2015, 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. In 2001, Mr. Shefqet Bajgora, the spouse, now deceased, of the Applicant Ms. Hava Bajgora, and at the same time the father of the Applicants. Mr. Alban and Mr. Sylejman Bajgora, concluded a contract for sale-purchase of a building in Prishtina.

12. On 20 March 2015, the Inspection Directorate (Decision no. 356-65493) ordered the demolition of the building of Mr. Shefqet Bajgora, now deceased spouse, namely deceased father of the Applicants, who, based on the family community certificate attached to the documents

of the case, are supposed to be his heirs. In the reasoning of this decision it was stated that:

> *"[...] Inspector for Construction of the Directorate of Inspection of the Municipality of Prishtina, following the inspection carried out with the minutes of 20.03.2015 found that: the building [...] was seriously damaged and is unprotected, therefore, as such, constitutes a danger to public health, environment and to the residents of the area.*
>
> *Based on Article 34, paragraphs 1, 2 and 3 of the Law no. 04/L-110 on Construction, Article 17, paragraph 1 and 2 of Article 39, items 3 and 4 of the Law no. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning And Construction, Article 4 and Article 19 para. 6 item 6.1, 6.2 of the Administrative Instruction MESP No. 18/2013 on Minimum Standards and Procedures for Inspection, Supervision and Issuance of Certificate of Occupancy, the inspector for the construction holds that the said object constitutes a threat to environment, endangers the property of others and presents a danger to the lives of others [...]".*

13. In the end of the abovementioned decision, it was stated the following:

> *"[...] LEGAL REMEDY: Against this Decision, unsatisfied party has the right to appeal within 15 days of receipt of this Decision. The appeal shall be filed with the Appeals Commission in the Municipality of Prishtina."*

Applicant's allegations

14. The Applicants allege that the Inspection Directorate demolished their building without their knowledge and prior notification, only a day after the challenged decision was rendered and thus violated their rights to equality before the law, the right to legal remedies, the right to protection of property and the right to judicial protection of rights, as guaranteed by the Constitution.

15. The Applicants further allege that by not serving the notice on demolition of their building *"denied them the right to present the facts and evidence or the right to appeal and participation in the administrative proceedings before the Municipality*."

16. Finally, the Applicants request the Court to annul the challenged decision as *"unconstitutional"* and to *"to remedy the situation caused by the municipal authorities",* without specifying what they mean by remedy of the caused situation.

Admissibility of the Referral

17. The Court first examines whether the Applicants have met the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

18. In this respect, 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".*

19. 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."*

20. In addition, the Court also refers to Rule 36 (1) (b) of the Rules of Procedure which states:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".*

21. As stated above, the Applicants challenge Decision (no. 356-65493, of 20 March 2015) of the Inspection Directorate, by which was ordered the demolition of their building. The Applicants allege that the Inspection Directorate violated their rights guaranteed by Articles 24, 32, 46 and 54 of the Constitution.

22. In this regard, the Court notes that the challenged decision is the first instance decision in the administrative procedure before the Municipality of Prishtina, and that against it was allowed appeal, which would be reviewed by the Appeals Commission of the Municipality of Prishtina.

23. The Applicants have not submitted to the Court any evidence indicating that they have appealed the challenged decision. In addition, the Applicants have not shown whether they have made any

other effort through other legal remedies to exercise their legal and constitutional rights, which have allegedly been violated to them.

24. Therefore, the Court considers that in this case, the Applicants' Referral is premature, as the proceedings upon the appeal before the second instance authority of the Municipality of Prishtina is still pending, or has not been at all initiated by the Applicants.

25. In addition, the Court notes that there are other legal remedies which the Applicants may exhaust regarding their appeals, and it is their responsibility, to use all effective legal remedies before submitting a Referral for constitutional review of any act, of any public authority before the Constitutional Court.

26. The Court reiterates that the principle of subsidiarity requires that, before addressing the Constitutional Court, the Applicants must exhaust all procedural possibilities in the regular proceedings, in order to prevent violation of human rights and freedoms guaranteed by the Constitution, or to remedy possible violations of rights guaranteed by the Constitution.

27. The rationale for exhaustion rule is to afford the concerned authorities, including the regular 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 shall provide an effective remedy for the violation of the constitutional rights. This is an important aspect of the subsidiary character of the Constitution (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no.25803/94, Decision of 28 July 1999).

28. In sum, the Court finds that in this case there is no final decision of the competent authority, which in this stage would be subject of review before the Constitutional Court. Therefore, the Court concludes that the Applicants' Referral is premature, due to non-exhaustion of all available legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 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 36 (1) (b) of the Rules of Procedure, on 10 September 2015, 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**
Bekim Sejdiu	Arta Rama-Hajrizi

KI53/15, Heset Neziri- Constitutional review of Judgment Pml. no. 223/2014 of the Supreme Court of 26 November 2014

KI53/15, Resolution on Inadmissibility of 11 September 2015, published on 10 November 2015

Keywords: *Individual referral, manifestly ill-founded referral, equality before the law, the right to a fair trial, imprisonment sentence, participation in a brawl, unauthorized possession of weapons*

The Supreme Court rejected as ungrounded the request for protection of legality filed by the Applicant regarding his conviction for committing the criminal offense, participating in a brawl. The Applicant filed complaint with the Constitutional Court for violation of the right to fair and impartial trial, because the courts did not question the witness proposed by him.

The Constitutional Court noted that the Applicant does not agree with the assessment of the facts and the application of the procedural and legal provisions by the regular courts, and it does not provide sustainable arguments in his Referral, namely he does not substantiate how his right to fair and impartial trial, guaranteed by the Constitution and the Convention, has been violated. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI53/15
Applicant
Heset Neziri
Constitutional review of Judgment Pml. no. 223/2014 of the Supreme Court of 26 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Heset Neziri from village Burnik, Municipality of Ferizaj, represented by Mr. Bahtir Troshupa, a lawyer from Prishtina.

Challenged Decision

2. The challenged decision is Judgment Pml. no. 223/2014, of the Supreme Court, of 26 November 2014, which rejected the Applicant's request for protection of legality against Judgment of the Court of Appeal (PAKR. No. 63/2014, of 19 March 2014), and Judgment of the Basic Court (PKR 6/2013 of 3 October 2013), as ungrounded.

3. The Applicant was served with the challenged Judgment on 24 December 2014.

Subject Matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which according to the Applicant's allegation, violates his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic Kosovo (hereinafter: the Constitution), Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and

Fundamental Freedoms (hereinafter: ECHR), and Article 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

Legal Basis

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

Proceedings before the Constitutional Court

6. On 24 April 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 2 June 2015, the President of the Court, by Decision GJR. KI53/15 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President by Decision KSH. KI53/15, appointed the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Bekim Sejdiu.

8. On 10 June 2015, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.

9. On 10 June 2015, the Court sent a request to the Basic Court in Ferizaj to submit a copy of the receipt, indicating the date when the Applicant was served with Judgment Pml. no. 223/2014, of the Supreme Court, of 26 November 2014.

10. On 1 July 2015, the President of the Court, by Decision GJR. KI53/15 on replacement of the Judge Rapporteur, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date the President of the Court, by Decision KSH. KI53/15 on the replacement of a member of the Review Panel, appointed Judge Altay Suroy as a member to the Review Panel.

11. On 9 July 2015, the Basic Court in Ferizaj submitted to the Court a copy of the receipt, which shows that the Applicant was served with Judgment Pml. no. 223/2014, of the Supreme Court, on 24 December 2014.

12. On 11 September 2015, 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. On 10 October 2011, the District Prosecutor's Office in Prishtina filed Indictment (PP. No. 111-7/2010) against the Applicant for committing the criminal offense of aggravated murder provided by Article 147, paragraph 1, sub-paragraph 9, and the criminal offense of unauthorized ownership, control, possession or use of weapons as provided by Article 328, paragraph 2 of the Provisional Criminal Code of Kosovo (hereinafter: PCCK).

14. On 19 October 2011, the District Court in Prishtina (Decision KA. No. 687/2011) upheld the indictment against the Applicant and the court proceedings began. As a result of the reorganization of the courts, the case was sent for further review to the Basic Court in Ferizaj, the Department for Serious Crimes.

15. On 3 October 2013, the Basic Court in Ferizaj, the Department for Serious Crimes, after the court hearing, rendered Judgment, PKR. no. 6/13, which found the Applicant guilty of the criminal offence of participating in a brawl stipulated in Article 155, paragraph 1 of the PCCK, and sentenced him to imprisonment in duration of 1 (one) year.

16. The Basic Court related to its decision on finding the Applicant guilty of the criminal offence of participating in a brawl under Article 155, paragraph 1 of CCK, found:

> *[…]*
> [The *Court] also* analyzed *the* testimonies of witnesses[…*]* in entirety and in relation to these accused*,* assessed the defence of the accused*, the* material evidence, and by assessing this evidence in connection to each other came to the *concrete* conclusion as mentioned in the enacting clause of the indictment that have to do with the accused Heset Neziri[…*]*.

17. The Applicant against Judgment PKR. No. 6/13 of the Basic Court in Ferizaj, filed appeal with the Court of Appeal, with an allegation of essential violation of the criminal procedure provisions, violation of the criminal law and erroneous determination of factual situation.

18. Regarding the allegation of incomplete determination of factual situation, the Applicant in his appeal stated, among other, that the Basic Court rejected his request to hear his witness, namely his spouse,

in order that she corroborates his alibi on the date of the event, and he also stated that he was denied the right to continue with questioning the key witness of the case, at the same time the injured party, during the judicial proceedings.

19. Against the abovementioned Judgment of the Basic Court in Ferizaj, the Basic Prosecutor in Ferizaj filed an appeal with an allegation of erroneous determination of factual situation. The Basic Prosecutor in Ferizaj in his appeal requested the Court of Appeal to modify the Judgment and to find the Applicant guilty of committing the criminal offense of aggravated murder provided by Article 147, paragraph 1, sub-paragraph 9, and the criminal offense of unauthorized ownership, control, possession or use of weapons as provided for in Article 328, paragraph 2 of the PCCK.

20. On 19 March 2014, the Court of Appeal (Judgment PAKR. No. 63/2014) rejected the appeals of the Applicant and of the Basic Prosecutor in Ferizaj as ungrounded and upheld Judgment PKR. no. 6/13, of the Basic Court in Ferizaj, of 3 October 2013. The Court of Appeal found that the Judgment of the Basic Court in Ferizaj does not contain essential violation of the criminal procedure provisions.

21. As to the Applicant's allegations that the Basic Court in Ferizaj rejected his request to hear his witness, the Court of Appeal held that *"[...] the testimonies of the injured parties dismiss these allegations [...], who stated among the other and described their actions and the reasoning given in this respect by the first instance court is accepted by this court too"*.

22. As to the complaints of the Applicant and of the Basic Prosecutor in Ferizaj regarding the length of sentence, the Court of Appeal found that their appealed allegations were ungrounded. In this regard, the Court of Appeal held that:"*[...] the* imposed sentence on the accused[...*]* by the first instance *c*ourt is in accordance with the intensity of social *danger of the criminal* offense and the degree of criminal liability of the accused as perpetrators, and that this sentence will achieve the purpose of punishment as provided for inArticle34 of the CCK".

23. On 8 July 2014, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against Judgment (PKR 6/2013, of 3 October 2013) of the Basic Court in Ferizaj and Judgment (PAKR. No. 63/2014 of 19 March 2014), of the Court of Appeal, alleging essential violation of the criminal procedure provisions and the criminal law. In his request for protection of legality, the Applicant, among others, claimed that the court arbitrarily rejected his proposal

for hearing his wife in order to corroborate his alibi for non-presence at the scene of event and it had denied him the right to continue to question the key witnesses, at the same time the injured parties in the proceedings.

24. On 17 November 2014, the State Prosecutor (Submission KMLP II, No. 164/2014) proposed that the Applicant's request for protection of legality be rejected.

25. On 26 November 2014, the Supreme Court of Kosovo (Judgment, Pml. No. 223/2014) rejected as ungrounded the Applicant's request for protection of legality.

26. Regarding the aforementioned Applicant's allegation for rejection of his request to hear his wife in the capacity of a witness, the Supreme Court found that:

> *"[...] regarding the rejection of the proposal for hearing the wife of the convict in capacity of witness were given reasons also in the challenged judgments, since in the administered evidence was determined the commission of the criminal offence by the convict, who for a period of time has been on the run.*
>
> *[...]*
>
> *[...] the reasons mentioned have been assessed also by the second instance court which found that the administered evidence by the first instance court reflect a fair assessment of the evidence and as such the Supreme Court approves them as fair and legitimate, due to which it rejects the request for protection of legality as ungrounded".*

27. In sum, the Court found that the Applicant's allegations assessed by the Court of Appeal and the evidence administered by the first instance court, reflect fair assessment of the evidence, and also found that the Applicant's claims *"[...] regarding violation of the Criminal Law are unclear, due to the fact that violations of the Criminal Law, for which can be filed a request for protection of legality are described in the provision of Article 385 which legal provision explicitly provides for cases when a court decision is considered to contain such violations".*

Applicant's allegations

28. As mentioned above, the Applicant in his Referral alleges violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution,

Article 6 [Right to a fair trial] of the ECHR, and of Article 10 of the UDHR.

29. In the present case, the Applicant alleges that the Court rejected his proposals to hear his wife as a witness and he has been denied the right to question the key witness.

30. Finally, the Applicant requests the Court to:

> *"Declare the Referral of the Applicant Heset Neziri admissible, Declare invalid Judgment Pml. No. 223/2014, of the Supreme Court, of 26 November 2014,Remand for consideration Judgment Pml. No. 223/2014, of the Supreme Court, of 26 November 2014".*

Admissibility of the Referral

31. 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 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. The Court also mentions Rule 36 of the Rules of Procedure, which states:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[...]*

d) the Applicant does not sufficiently substantiate his claim".

34. As mentioned above, the Applicant in his Referral alleges violation of his right to a fair and impartial trial because the court has rejected his proposal to hear his wife as a witness, and that he was denied the right to continue examination of the key witness.

35. In this regard, the Court notes that the Court of Appeal assessed that the testimonies of the injured parties dismiss the abovementioned Applicant's allegations, and as a result, it upheld the reasoning given by the Basic Court in Ferizaj.

36. In addition, the Court notes that the Supreme Court in its judgment held that based on the administration of evidence by the first instance court and the reasoning given in the challenged judgments, it has been determined the commission of the criminal offence by the Applicant. As to the Applicant's allegations regarding the questioning of the key witness, the Supreme Court found that based on the minutes of the court hearing, it follows that the court proceedings was conducted in accordance with legal provisions.

37. The Court notes that the Applicant does not agree with the assessment of facts and the application of procedural and legal provisions by the regular courts. The assessment of facts and the applicable law are the matters which fall within the scope of legality.

38. In this respect, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law(legality),allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms guaranteed by the Constitution (constitutionality).

39. Therefore, the Court does not act as a court of fourth instance in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See case *Garcia Ruiz vs. Spain,* no. 30544/96, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

40. The Court notes that the Applicant does not provide sustainable arguments in his Referral, namely he does not substantiate how his right to fair and impartial trial, guaranteed by the Constitution and the ECHR, has been violated.

41. In this respect, the court notes that a mere fact that the Applicant is dissatisfied with the outcome of the proceedings completed before the regular courts does not suffice for the Applicant to raise an allegation of constitutional violation. (See, *mutatis mutandis,* case *Mezőtúr-Tiszazugi Vízgazdálkodási Társulat against Hungary,* nr. 5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such constitutional violations, the Applicant must present a reasoned allegation and convincing argument (See case No. KI198/13, Applicant: *Privatization Agency of Kosovo,* Constitutional Court, Resolution on Inadmissibility of 13 March 2014).

42. In addition, as mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear, and after having considered all the proceedings, the Court found that the proceedings before the Basic Court in Ferizaj and before the Court of Appeal have not been unfair or arbitrary (See case *Shub v. Lithuania,* no. 17064/06, ECHR, Decision of 30 June 2009).

43. Finally, the Court reiterates that the Applicant has not presented any convincing argument to establish that the alleged violations mentioned in the Referral, represent violations of his rights guaranteed by the Constitution (see case, *Vanek v. Republic of Slovakia*, no. 53363/99, ECHR, Decision of 31 May 2005).

44. For the foregoing reasons, the Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of the right to fair and impartial trial and that the Applicant has not sufficiently substantiated his claim.

45. Therefore, the Referral is manifestly ill-founded and, accordingly, inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 of the Law, and in accordance with Rule 36 (1) (d) and 2 (b) and (d) of the Rules of Procedure, on 5 November 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Bekim Sejdiu

President of the Constitutional Court
Arta Rama-Hajrizi

KI61/15, Islam Krasniqi - Constitutional review of Judgment A. A. no. 2/2014 of the Court of Appeal of Kosovo of 21 February 2014

KI61/15, Resolution on Inadmissibility of 10 September 2015, published on 10 November 2015

Keywords: *Individual referral, out of time referral, the disciplinary committee, termination of employment relationship, equality before the law, the right to work, the right to fair trial, the lawyer's responsibility*

The Court of Appeal of Kosovo rejected as ungrounded the appeal of the Applicant regarding termination of employment relationship. The Applicant filed complaint with the Constitutional Court for violation of the right to work, fair and impartial trial and equality before the law, and the irresponsibility of his lawyer.

The Constitutional Court notes that the Applicant had submitted the referral after the expiry of the deadline of four months and added that the conduct of his lawyer is also the responsibility of the Applicant. The Constitutional Court declared the Referral inadmissible because it was out of time in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI61/15
Applicant
Islam Krasniqi
Constitutional review of Judgment A. A. no. 2/2014 of the Court of Appeals of Kosovo of 21 February 2014

CONSTITUTIONAL COURT OF REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Islam Krasniqi from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment A. A. no. 2/2014, of the Court of Appeal of Kosovo, of 21 February 2014. The challenged Judgment was served on the Applicant on 14 March 2014.

Subject Matter

3. The subject matter is the constitutional review of Judgment A. A. no. 2/2014, of the Court of Appeal of Kosovo, of 21 February 2014.

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 Constitutional Court

5. On 13 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 June 2015, the President of the Court by Decision no. GJR. KI61/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI61/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 23 July 2015, the Court notified the Applicant about the registration of the Referral. A copy of the Referral was sent to the Court of Appeal of Kosovo and to the Basic Court in Prishtina. The Court also requested the Applicant and the Basic Court in Prishtina to submit evidence of the date of receipt of the decision challenged by the Applicant.

8. On 24 July 2015, the Basic Court in Prishtina submitted to the Court the evidence (the copy of receipt) showing the date when the challenged judgment was served on the Applicant.

9. On 10 September 2015 the review panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. On 8 February 2010, the Applicant established employment relationship with the Ministry of Internal Affairs of the Republic of Kosovo. Meanwhile, the Applicant was accused by his superiors and by his colleagues of non-performance of his work duties and of misconduct. From the case file it results that he was imposed several verbal and written warnings (No. 574/03, on 4 June 2010, and No. 136/2012, on 9 March 2012) by his superiors.

11. On 10 May 2012, the Disciplinary Committee of the Ministry of Internal Affairs rendered Decision No. 313/12 on termination of the employment relationship between the Applicant, as employee, and the Ministry of Internal Affairs, as employer. The Disciplinary Committee reasoned that the Applicant, despite the written warnings by his superiors, he continued with misbehavior, with non-performance of his work duties, with blackmail and physical threats.

12. The Disciplinary Committee reasoned, among the other:

> *"Based on different statements and documents sent to different addresses, it can be seen that (the Applicant) has made: slanders, insults, labeling, blackmails against his work colleagues, superiors and the institution where he works, and he did not have any argument to convince the Disciplinary Committee in relation to his allegations".*

13. On an unspecified date, the Applicant complained to the Dispute Resolution and Appeal Commission under the Ministry of Internal Affairs.

14. On 13 June 2012, the Dispute Resolution and Appeal Commission, by Decision no. 422/2012, rejected the Applicant's appeal and upheld the decision of the Disciplinary Committee.

15. On an unspecified date, the Applicant complained to the Independent Oversight Board for Civil Service of Kosovo (hereinafter: IOBK). The Applicant, among others, alleged that his superiors dealt with blackmail and slander, he requested reinstatement without discrimination to his working place and compensation for the difficult conditions and risk that characterized his working place.

16. On 12 July 2012, the IOBK, by Decision No. 1166 - 02/159/2012, rejected the Applicant's appeal and upheld the decisions of the Dispute Resolution and Appeal Commission and of the Disciplinary Committee. The IOBK, among others, reasoned that the Applicant was promoted to the position and salary as a stimulating measure, but despite this he continued with misconduct and non-performance of work duties.

17. The IOBK in the above-mentioned decision, reasoned among other:

> *"The Board Panel ascertained that: the coefficient of the appellant was increased from 5 to 6, but he has continuously violated the tasks and duties, and due to his conduct, he was imposed verbal and written warnings several times by his supervisors, therefore the S.P., based on Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Article 51, paragraph 4, requests that the appellant becomes the subject of disciplinary measures due to the violation of the provision of Article 56, paragraph 1.4, and based on Article 66, paragraph 4.3, the Disciplinary Committee shall impose the disciplinary measure – termination of the employment relationship in the Civil Service on him, since the more lenient*

measures given by the supervisors did not have any effect on his improvement".

18. On an unspecified date, the Applicant filed appeal against the decision of the IOBK with the Basic Court in Prishtina - Department of Administrative Matters. The Applicant alleged that the IOBK rendered unlawful decision without his presence, that only the evidence of the opposing party were reviewed and that he was not given the opportunity to present new evidence.

19. On 22 October 2013, the Basic Court in Prishtina - Department of Administrative Affairs, by Judgment A. no. 892/2012, rejected as ungrounded the Applicant's statement of claim. The Basic Court, among others, reasoned that the IOBK is not obliged to hold a public hearing unless the parties request this in writing.

20. The Basic Court in Prishtina in the abovementioned decision, reasoned among the other:

    ".... the Court referred to the Regulation No.02/2011 on the Rules and Procedure of Appeal before the Independent Oversight Board for the Civil Service of the Republic of Kosovo, Article 4.2.6, which provides as follows: "The Panel shall review the appeal and render decisions on the basis of proof of the matter. In case of conflict of material fact, or a party requesting, the Board shall authorize the Secretariat to hold a public session.

    According to the abovementioned legal provisions, the respondent IOBCSK was not obliged to hold a public session, except only when the parties request such a thing in writing".

21. On 22 November 2013, the Applicant filed appeal with the Court of Appeal of Kosovo. The Applicant complained in essence that the court of fact was biased in taking the evidence and that he had not violated working rules as provided by the decisions of the committees of the Ministry of Internal Affairs and the IOBK.

22. On 21 February 2014, the Court of Appeal of Kosovo, by Judgment AA no. 2/2014, rejected the Applicant's appeal as ungrounded and upheld the decision of the Basic Court in Prishtina. The Court of Appeal characterized the Applicant's allegations as ungrounded, generalized and non-specific.

Applicant's allegations

23. The Applicant requests the Court to declare unconstitutional and unlawful the decisions of the regular courts, of the IOBK and of the disciplinary committees, because the termination of employment constitutes a violation of human rights, discrimination, unfair trial, ban of free speech, ban on access to public documents and violation of the right to career. The Applicant refers to Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 40 [Freedom of Expression], Article 41 [Right of Access to Public Documents], Article 49 [Right Work and Exercise Profession] and Article 55 [Limitation of Fundamental Rights and Freedoms] of the Constitution.

24. The Applicant alleges that he did not appeal to the Supreme Court of Kosovo because of his lawyer's errors and due to the irresponsibility of the Appeal Court of Kosovo.

Assessment of admissibility

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

26. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

27. The Court 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".*

28. The Court also takes into account Rule 36 1 (c) of the Rules of Procedure, which provides:

"(1) The Court may consider a referral if:

...

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant...".

29. The Court considers that in order to realize their constitutional rights the Applicant should exhaust legal remedies before the competent authorities; and only after having taken these actions, i.e. after exhaustion of legal remedies, he may address the Constitutional Court if he deems it necessary and that within the four (4) month time limit prescribed in Article 49 of the Law and further specified in Rule 36 1 (c) of Rules of the Procedure. (See case No. KI91/13, Applicant *Shpend Zajmi, Avni Kryeziu and 19 others*, Resolution on Inadmissibility, of 28 October 2013).

30. In the present case, the Court notes that the Applicant was served with the last challenged decision on 14 March 2014, whereas the Referral was submitted on 13 May 2015, namely 10 (ten) months after the deadline provided by law.

31. The Court recalls that the object of the four month legal deadline under Article 49 of the Law and Rule 36 (1) c) 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 decisio*ns are not continually open to challenge (See case *O'Loughlin and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005 and see, *mutatis mutandis,* Case no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 3 March 2014).

32. The Court also notes that the Applicant blames his lawyer for not complying with the legal deadline, and for this reason he filed a complaint with the Chamber of Advocates, which, in fact, is not a valid argument for consideration before the Constitutional Court; moreover, when the Appeals Commission of Chamber of Advocates concluded that the Applicants lawyer had not violated his duties or code of ethic that are related to his work as a lawyer.

33. The Court reiterates that the conduct of his lawyer or the authorized representative by the Applicant itself is responsibility of the Applicant. Any procedural action or inaction on the representative's part are in principle attributable to the applicant himself (*Bekauri v. Georgia*, No. 14102/02 ECHR, Judgment of 10 April 2012, §§ 22-25; and see

mutatis mutandis, Case No. KI02/10, Resolution on Inadmissibility, *Roland Bartezko, paragraph 25-28,21 march 2011 and Migliore and Others v. Italy,* No. 58511/13 ECHR,Decision of 27 January 2014).

34. In sum, the Court concludes that the Referral is out of time and is to be declared inadmissible in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution; Article 49 of the Law and Rule 36 (1) (c), of the Rules of Procedure, on 10 September 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this 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
Bekim Sejdiu

President of constitutional Court
Arta Rama-Hajrizi

KO 130/15, The President of the Republic of Kosovo – Concerning the assessment of the compatibility of the principles contained in the document entitled "*Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*" with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo

KO 130/15, Judgment of 21 December 2015, published on 23 December 2015.

Keywords: *Institutional referral, abstract control, preventive constitutional control, jurisdiction and authorized parties organization of units of local self-governance, civil service, Chapter II and III of the Constitution.*

The President of the Republic of Kosovo in accordance with Articles 84 (9) submitted a referral with the Constitutional Court of the Republic of Kosovo. The Referral contained a request for the assessment of the compatibility of the principles contained in the document entitled "Association/Community of Serb municipalities in Kosovo - general principles/main elements" with the spirit of the Constitution, Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo.

Before providing substantive answers to the particular constitutional questions posed by the Applicant, the Court positively determined two procedural questions by stating that the Applicant is an authorized party and that the document contained in the Referral can be subject to constitutional review. The Court elaborated on the background of the document under review namely by making reference to the First Agreement on the Normalization of Relations between the Republic of Kosovo and Republic of Serbia and moreover sought the opinion of two legal experts by way of *amicus curia* briefs.

As to the substantive aspect of the Referral, the Constitutional Court found that some general principles contained in the document under constitutional review do not entirely meet the constitutional standards enshrined in the Constitution of the Republic of Kosovo. The Court stated that any legislation or document stemming from the document under constitutional review must be in full compliance with the provisions of the Constitution of the Republic of Kosovo namely: (i) Chapters II and III of the Constitution with regard to the fundamental human rights and the rights of Communities, (ii) matters of local self-government and matters related to the status of Civil Service in the Republic of Kosovo. The Court backed up its reasoning by

relying largely on the Provisions of the Constitution of the Republic of Kosovo, legislation on matters of local self-government and civil service respectively, various international legal instruments, the case-law of Constitutional Court of the Republic of Kosovo and the relevant case-law of the European Court of Human Rights.

DECISION ON INTERIM MEASURE
in
Case No. KO130/15
Applicant
The President of the Republic of Kosovo
Concerning the assessment of the compatibility of the "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

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

Subject matter

2. The Referral contains a request for the assessment of the compatibility of the "Association/Community of Serb municipalities in Kosovo – general principles/main elements" (hereinafter: the "Principles of Association") with the spirit and Article 3 [Equality Before the Law], Paragraph 1, , Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their members] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

3. Specifically, the Applicant requests that the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") responds to the following question:

> *"Taking into consideration that the Principles of Association regulate the creation and functioning of the Association of the municipalities with Serb majority in Kosovo, are these principles and elements compatible with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo?"*

4. In addition, the Applicant requests from the Court to impose an interim measure, namely that, *"each activity and effect produced by the Principles of Association is suspended, [the Applicant] requests that the Court places a temporary measure on the issue raised until the final decision [of the Court]"*.

Legal basis

5. The Referral is based on Articles 84.9, 113.2 and 116.2 of the Constitution, Articles 27 and 29 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rules 54, 55 and 56 (c) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 31 October 2015 the Applicant submitted the Referral to the Court.

7. On 02 November 2015 the President of the Court, by Decision GJR.KO130/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH.KO130/15, the President of the Court appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

8. On 03 November 2015 the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit a copy of the text of the "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" in the official languages of the Republic of Kosovo.

9. On 04 November 2015 the Applicant submitted the text of the "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" in the official languages of the

Republic of Kosovo, and including an initialed copy in the English language.

10. On 05 November 2015 the Court submitted a copy of the Referral to the President of the Assembly of Kosovo with the explicit request for it to be submitted to all Deputies of the Assembly, to the Prime Minister of the Government of the Republic of Kosovo, and to the Ombudsperson, and invited them to submit their comments on the Referral within a set deadline.

11. On 10 November 2015, after having heard the Judge Rapporteur and having discussed the request for an interim measure submitted by the Applicant, the Court decided to grant the Request for Interim Measures until 12 January 2016.

Brief summary of facts

12. On 19 April 2013 the Prime Ministers of the Republic of Kosovo and the Republic of Serbia signed the "First International Agreement on the Principles that Regulate the Normalization of the Relations between the Republic of Kosovo and the Republic of Serbia" (hereinafter: the "First International Agreement").

13. On 22 April 2013, during an extra-ordinary session requested by the Prime Minister, the Assembly approved Resolution no. 04-R-10, on Giving Consent to the Signing of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia (Published on the Webpage of the Assembly). According to this Resolution:

    a. *"the Assembly of Kosovo grants consent and supports signing of the first agreement for normalization of relations between the Republic of Kosovo and the Republic of Serbia [...]";*
    b. *"[...] the Assembly of Kosovo supports the promises contained in this agreement [...]"*

14. On 28 May 2013, the Government adopted Decision No. 01/132, *"Approving the Draft Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement."* Furthermore, in accordance with this Decision, the Government proceeded with the Draft Law for review and adoption by the Assembly.

15. On 27 June 2013, the Assembly held a plenary session where Law, No. 04/L-199, on Ratification was voted upon and adopted. Of the

Deputies present, 84 voted in favour, 3 were against and one Deputy abstained. On the same day the Law on Ratification was sent for promulgation to the President of the Republic of Kosovo.

16. On 12 September 2013, by Decree No. DL-050-2013, the President of the Republic of Kosovo promulgated the Law on Ratification.

17. The First International Agreement contained, *inter alia*, the following provisions:

    1. *"There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.*
    2. *The Association/Community will be created by Statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).*
    3. *The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities, e.g. President, Vice-President, Assembly, Council.*
    4. *In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Association/Community collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.*
    5. *The Association/Community will exercise other additional competences as may be delegated by the central authorities.*
    6. *The Association/Community shall have a representative role to the central authorities and will have a seat in the communities consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged."*

18. In the referral is stated that on 25 August 2015 the Prime Minister of the Republic of Kosovo agreed on the *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements.*

Applicant's request and the request for an interim measure

19. The Applicant requests the Court to respond to the following question:

"Taking into consideration that the Principles of Association regulate the creation and functioning of the Association of the municipalities with Serb majority in Kosovo, are these principles and elements compatible with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo?"

20. The Applicant argues that,

"The Principles of Association, in the format of a legal act approved by the Prime Minister of the Republic of Kosovo, handles issues which fall under the scope of issues which touch upon the spirit of the Constitution and issues specified in Article 3.1, Chapters II and III, as in the understanding of the notion of the multi-ethnic nature, of basic rights and freedoms, rights of communities and their members, as well as the nature of institutions stemming from the Constitution. Therefore, implementation of the obligations of the Principles of Association produces a legal effect in the constitutional system of the Republic of Kosovo. As per the commitment of the Principles of Association, it is clear that this issue constitutes the ratione materiae, as the issue raised falls under the scope of constitutional issues, also as reflected in [Judgments] taken by the Constitutional Court in cases No. KO80/10 and No. KO103/14. Characteristic of the criteria of "constitutional issues", already determined in the above-mentioned cases, is that the issue falls under the scope of activity of the Constitution of the Republic of Kosovo, both in letter and in spirit.

The Principles of Association is a document signed by the Prime Minister and represents the dedication of the Government to create a new legal entity which produces legal effects in the constitutional order of the Republic of Kosovo. The Principles of Association stem from the "First International Agreement on Principles which Regulate the Normalization of Relations [...]", ratified by the [Assembly] of the Republic of Kosovo by Law No. 04/L-199, on Ratification of the First International Agreement which Regulates the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia [...].

[...]

From the constitutional authority of the [Applicant] as head of state derives the right to refer constitutional issues in accordance with Article 113, paragraphs 2 and 3 (jurisdiction and authorized

parties) of the Constitution. The reason for this lies in the fact that there are legal acts and conditions which are considered "constitutional issues" but cannot be formally submitted to the Constitutional Court, as they are not in the format of a law, decree, regulation or a municipal statute (as per Article 113, paragraph 2 of the Constitution). Such is also the case with the "Principles of Association", which is not an international agreement but an applicable legislation deriving from an international agreement. The "First International Agreement" is not executable per se and requires additional legislation for [its] implementation.

[...]

The Principles of Association is an intermediary legal act, which stems from the "First International Agreement", adds additional elements in the process of creating the legal entity itself (the Association/Community), and precedes the founding act (Decree of the Government of Kosovo on Establishment, as per Article 2 of the Principles of Association), hence having a conditioning effect on the founding act. Taking into consideration these facts, the need arises for a constitutional assessment of the Principles of Association itself and its compliance with the Constitution."

21. In addition to providing a response to this question, the Applicant, requests the Court to impose an interim measure. The Applicant considers that it would be in the public interest that, *"each activity and effect produced by the Principles of Association is suspended, [and therefore the Applicant] requests that the Court places a temporary measure on the issue raised until the final decision [of the Court]"*.

22. The Applicant argues in support of this request that,

"One of the reasons for physical barriers to hold the plenary sessions of the Assembly of Kosovo are the allegations of the opposition parties on constitutional non-conformity of the content of the Principles of Association. Due to the situation created in the Assembly of the Republic of Kosovo, and the inability of the [Assembly] to carry on its duties in a normal manner, the [Applicant] considers that the effect of the Principles of Association as it is in the ***public interest*** *to avoid further escalation of abnormality, the [Applicant], in exercising her competencies stemming from Articles 83 and 84, has a duty to enable the functioning of the state by adding institutional credibility to the*

requests which have caused the blockade, by raising this issue at the Constitutional Court".

Assessment of the request for an interim measure

23. In order for the Court to grant an interim measure in accordance with Article 27 of the Law and Rule 55 (4), (5) and (6) of the Rules of Procedure, it must be determined that:

Article 27 of the Law

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

Rule 55 (4) of the Rules of Procedure:

[...]

"(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".

Rule 55 (5) of the Rules of Procedure

"If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".

Rule 55 (6) of the Rules of Procedure (excerpt)

"[...] No decision granting interim measures may be entered unless the expiration date is specified; however, expiration dates may be extended by further decision of the Court. If the admissibility of the referral has not yet been determined, the resolution shall state that interim measures will expire immediately if the Court determines the referral inadmissible."

24. In this respect, the Court notes that the Applicant has presented detailed argument relating to the need for a review of the compliance of the "Principles of Association" with the Constitution, and to be considered under the heading of "constitutional issues" within the meaning of Article 84.9 of the Constitution. Therefore, it comes within the scope of the jurisdiction of the Court, *ratione materiae*, under Article 113.2 of the Constitution.

25. As such, the Court considers that the Applicant has presented a *prima facie* case on the merits of the Referral, within the meaning of Rule 55, paragraph 4, under (a), of the Rules.

26. Furthermore, the Court notes that the Applicant argues that the imposition of an interim measure is necessary on the grounds of public interest. The Applicant argues that the functioning of state institutions, notably of the plenary meetings of the Assembly of the Republic of Kosovo, has become blocked as a consequence of a dispute between the governing political parties and the political parties of the opposition in regard to these Principles of Association.

27. The Applicant claims that this dispute relates, *inter alia* to the compatibility of these "Principles of Association" with the Constitution.

28. Moreover, the Court notes that the Applicant is in the constitutional position of the Head of State of the Republic of Kosovo, and represents the unity of the people of Kosovo and guarantor of the constitutional functioning of the institutions of the Republic of Kosovo, as prescribed by Articles 83 and 84 of the Constitution.

29. The Court has notified the Government of Kosovo, the Deputies of the Assembly of Kosovo and the Ombudsperson of the registration of this Referral and has offered them an opportunity to comment.

30. Given these circumstances, the Court considers that there are substantial reasons of a public interest nature within the meaning of Rule 55, paragraph 4, under c, of the Rules that warrant a suspension in the implementation of any further legal actions on the basis of these Principles of Association pending the Court's review of the compliance with the Constitution of these Principles.

31. Therefore, the Court, without prejudice to any further decision which will be rendered by the Court, on the admissibility or merits of the referral in the future, concludes that the request for interim measures must be granted in order to protect the public interest.

32. In addition, the Court notes that the Law does not provide for any deadline within which the Court must reach a decision on Referrals under Articles 84.9 in conjunction with Article 113.2 of the Constitution. Therefore, taking this into consideration, the Court decides to grant the Interim Measure until 12th of January 2016.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law and Rule 55 (4), (5) and (6) of the Rules of Procedure, on 10 November 2015, unanimously

DECIDES

I. TO GRANT an interim measure;

II. That this interim measure shall apply until 12January 2016;

III. TO NOTIFY this Decision to the Parties;

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

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI121/14, Valdet Nikçi and others- Constitutional Review of Decision Rev. no. 21/14 of the Supreme of Kosovo of 3 April 2014

KI121/14, Resolution on Inadmissibility of 8 September 2015, published on 11 November 2015

Keywords: *Individual referral, non-exhaustion of legal remedies, equality before the law, the right to work, the right to fair trial, compensation of salaries, material and procedural law, the principle of subsidiarity, repetition of proceedings*

The Basic Court in Peja terminated the contested procedure in which were involved the Applicants and the Privatization Agency of Kosovo, with a reasoning that it should be waited for the decision of the Constitutional Court regarding a decision of the Supreme Court which was also challenged by the Applicants. The Applicants complained to the Constitutional Court for violation of the right to fair and impartial trial, right to legal remedies and the principle of equality before the law.

The Constitutional Court noted that the Applicants' Referral was premature and that the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in the regular proceedings, administrative or judicial proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right. The Constitutional Court declared the Referral inadmissible due to non-exhaustion of legal remedies, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI121/14
Applicant
Valdet Nikçi and others
Constitutional Review of Decision Rev. no. 21/14 of the Supreme of Kosovo of 3 April 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Valdet Nikçi, Nimon Dinaj, Isuf Vukli, Fazli Kuçi,Shkëlzen Morina, Sutkije Boja, Nusret Kurtaj, Shqipe Dakaj, Nimon Shala, Sejdi Camaj, Kimete R. Kastrati, Ramadan Morina, Hedije Dupa, Qazim Qavolli, Nekibe Morina, Nusret Belegu, Mybera Tigani, Hajdin Vermezi, Mevlyde Kullashi, Ferid Dupa, Hale Smakaj, Isuf Dreshaj, Kimete Kastrati, Besim Ademaj, Vjollca Kelmendi, Hazir Jonuzi, Sylejman Laja, Emin Sylejmani, Mustafë Ahmeti, Qerim Rama, Xhevat Berisha, Sejdi Durmishi, Deli Shala, Rexhë Nikçi, Sudan Krasniqi, Rifat Shala, Imer Blakaj, Xhevat Daci, Hysen Dreshaj, Shefki Seferaj, Shyqri Jashari, Rifat Zekaj, Jakup Shala, Shaban Kelmendi, Ejup Bojupi, Haki Gashi, Ali Shala, Shaban Dakaj, Rifat Kuçi, Xhevdet Shala, Bislim Lajçi, Nimon Kastrati, Lutfo Rebronja, Isa Gashi, Hazir Beqiri, Muzli Ukshinaj, Rexhep Tishuku, Bilall Durmishi, Daut Berisha, Skënder Rexhëbogaj, Skënder Krasniqi, Hajrullah Zhara, Ahmet Muriqi, Ramiz Kastrati, Dinë Kuqi, Rrustem Elshani, Bajram Bobi, Çelë Nikçi, Xhevat Gashi (hereinafter: the Applicants). The employees are represented by Mr. Valdet Nikçi, who is the President of the Trade Union of the Factory for Metal Constructions (former-UTVA) in Peja.

Challenged decision

2. The Applicants challenge Decision Rev. no. 21/14 of the Supreme Court of the Republic of Kosovo of 3 April 2014 (hereinafter: the Supreme Court).

3. The Applicants have not specified the date when the abovementioned Decision of the Supreme Court was served on them.

Subject matter

4. The subject matter is the constitutional review of the abovementioned Decision.

5. The Applicants allege that the decisions of the regular courts have violated Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution as well as their rights guaranteed by the Law on Contested Procedure and by the Law on Labor.

6. The Applicants' Referral is related to the compensation of unpaid salaries by the Factory for Metal Constructions (former-UTVA) in Peja, including the time period from 1 June 1995 until 31 March 1999.

Legal basis

7. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

8. On 23 July 2014 the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

9. On 6 August 2014 the President of the Court by Decision no. GJR. KI121/14 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI121/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

10. On 12 September 2014 Mr. Valdet Nikçi submitted the power of attorney for the representation of the Applicants before the Court.

11. On 17 September 2014 the Court informed the Applicants about the registration of Referral KI121/14 and sent a copy of the Referral to the Supreme Court.

12. On 5 December 2014 the Court requested from the Applicants some additional information.

13. On 12 December 2014 the Applicants submitted to the Court the additional information.

14. On 25 February 2015 the Court requested from the Applicants to complete the Referral and to fill out the official form of the Referral.

15. On 9 March 2015 the Applicants submitted to the Court the Referral form.

16. On 29 June 2015 the President by Decision KSH. KI121/14 appointed Judge Arta Rama-Hajrizi as a member to the Review Panel, replacing Judge Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.

17. On 8 September 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible.

Summary of the facts

18. The Applicants were employed in the Factory for Metal Constructions in Peja. According to the Applicants, the factory in question has not compensated their monthly salaries from 1 June 1995 to 31 March 1999, a period when they were coercively removed from work.

19. The Applicants filed a claim with the Municipal Court in Peja against the Factory for Metal Constructions in Peja (former UTVA).

20. On 27 October 2004 the Municipal Court in Peja rendered Judgment C. no. 133/03, approving the Applicants' claim and obliging the Factory for Metal Constructions in Peja (the respondent), to pay them unpaid monthly income, from 1 June 1995 to 31 March 1999. The Judgment further states: *"Based on the determined factual situation and indisputable facts between the litigants in the proceedings, the court found that the specified statements of claim of the claimants have legal basis, and as such were approved by the court as grounded"*.

21. The Factory for Metal Constructions (former UTVA)did not file an appeal against the Judgment of the Municipal Court in Peja.

22. Kosovo Trust Agency (hereinafter: the KTA), through the State Public Prosecutor, filed a request for protection of legality with the Supreme Court against Judgment C. no. 133/03 of the Municipal Court in Peja.

23. On 22 March 2005 the Supreme Court of Kosovo (Judgment Mlc. no. 2/2005) rejected as ungrounded the request for protection of legality, reasoning that the Municipal Court in Peja had jurisdiction to decide on the claims, in accordance with the Law on Regular Courts (No. 21/1978) and it had correctly determined the facts and correctly applied the procedural and substantive law.

Facts as to the request for repetition of proceedings

24. On an unspecified date, the Privatization Agency of Kosovo (hereinafter: the PAK) filed a request for repetition of proceedings with the District Court in Peja.

25. On 22 November 2010 the District Court in Peja by Decision Ac. no. 390/2010 rejected the request for repetition of the proceedings regarding Case C. no. 133/03, which was decided by the Municipal Court in Peja, on 27 October 2004.

26. PAK filed an appeal with the second instance of the same court against the Decision of the District Court in Peja.

27. On 21 March 2011 the District Court in Peja (the second instance) rendered Decision K. Ac. no. 4/10, quashing the first instance decision of the District Court in Peja and remanding the case to the first instance for reconsideration and retrial.

28. On 20 April 2011 the District Court in Peja (first instance) rendered Decision AC. no. 141/2011, allowing the repetition of the procedure that was completed with final Judgment (C no. 133/03, of 27 October 2004) of the Municipal Court in Peja, and annulling the Judgment in its entirety.

29. The Applicants filed a revision with the Supreme Court against the Decision (Ac. no. 141/2011) of the District Court in Peja, which approved the request for repetition of the proceedings.

30. On 3 April 2014 the Supreme Court of Kosovo (Decision Rev. no. 21/2014) rejected the revision filed against the Decision of the District Court in Peja as inadmissible.

Facts as to the contested proceedings

31. After approving the repetition of proceedings by the District Court in Peja (second instance), the Basic Court in Peja started ex officio to review the case, which was registered underno.C.no.254/11.

32. On 2 June 2014 PAK requested the termination of the contested procedure regarding the case C. no. 254/11, which was pending consideration by the Basic Court in Peja.

33. On 23 July 2014theApplicantssubmittedthe Referral to the Constitutional Court of the Republic of Kosovo and informed the Basic Court in Peja about the Referral.

34. On 3 September 2014 the Basic Court in Peja decided to terminate the contested procedure. The minutes of the court in question state: *"the session is postponed for indefinite time and the date of the next hearing will be set after the Constitutional Court decides on the legality of the decision of the Supreme Court ..."*.

Applicant's allegations

35. The Applicants allege that the decisions of the regular courts have violated Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution as well as their rights guaranteed by the Law on Contested Procedure and the Law on Labor.

36. In addition, the Applicants raised before the Court the following issues:

- *Is the KTA, respectively PAK a party to the proceedings in the present case?*
- *Was the District Court entitled to approve the request for repetition of procedure, at the request of the PAK, after the expiry of 5 years after the Judgment C. No. 133/03 became final and that is at the time of liquidation of the enterprise, whereas now requires the termination of the procedure due to the liquidation-the company is in the process of liquidation?*
- *According to all the evidence submitted, are the workers entitled to compensation of unpaid salaries for the work done for the period mentioned in the claim and in the Judgment of the MC. C. no. 133/03.*

Admissibility of the Referral

37. In order to adjudicate the Applicants' Referral, the Court must examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rule of Procedure.

38. In this case 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."*

39. In addition, Article 47.2 of the Law provides:

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

40. Furthermore, Rule 36 (1) (b) of the Rules of Procedure provides:

> *"The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".*

41. In the present case, the Court notes that the Basic Court in Peja on 3 September 2014, at the request of PAK, decided to suspend the contested proceedings regarding Case C. no. 254/11 until the Constitutional Court renders a decision, as requested by the Applicants.

42. Based on the fact that the Applicants' case is still pending in regular court proceedings, namely before the Basic Court in Peja, the Court considers that the Applicants' Referral is premature.

43. In this regard, the Court reiterates that the regular courts are independent in exercising their judicial authority, and it is their constitutional duty to interpret questions of fact and law that are relevant to the cases brought before them.

44. The rationale for the exhaustion rule is to afford, as in the present case the regular courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order provides an effective remedy for the violation of

constitutional rights (see: Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo* KI41/09, of 21 January 2010, and see *mutatis mutandis,* ECtHR, *Selmouni v. France,* no. 25803/94, Decision of 28
July 1999)

45. Thus the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in the regular proceedings, administrative or judicial proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (See Resolution in Case No. KI07/09, *Demë Kurbogaj and Besnik Kurbogaj*, Review of the Supreme Court Judgment Pkl. no. 61/07 of 24 November 2008, paragraph 18)

46. Accordingly, the Constitutional Court cannot assess the alleged constitutional violations before the regular courts have completed the procedures that have been brought before them.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) (b) of the Rules of Procedure on 8 September 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Arta Rama-Hajrizi

KI35/15, Applicant Sami Omura - Constitutional review of Decision Rev. no. 341/2014 of the Supreme Court of the Republic of Kosovo of 6 January 2015

KI35/15, Resolution on Inadmissibility of 30 October 2015, published on 11 November 2015

Keywords*: Individual referral, manifestly ill-founded referral, legal custodian, equality before the law, the right to marriage and family, the rights of children, the right to a fair trial, the adoptive relationship*

The Supreme Court rejected as ungrounded the request for revision of the Applicant regarding the adoption of a male child. The Applicant filed complaint with the Constitutional Court for violation of his right to establish an adoption relationship.

The Constitutional Court reiterated that it does not act as a court of fourth instance with respect to the decisions taken by the regular courts or other public authorities. It is the role of regular courts or other public authorities, to interpret and apply the pertinent rules of procedural and substantive law, and added that the proceedings before the regular courts were fair and reasoned. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI35/15
Applicant
Sami Omura
Constitutional review of Decision Rev. no. 341/2014 of the Supreme Court of the Republic of Kosovo of 6 January 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Sami Omura, with residence in village Greme, Municipality of Ferizaj, represented by Mr. Sabri Kryeziu, lawyer.

Challenged decision

2. The Applicant challenges Decision Rev. no. 341/2014 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 6 January 2015, which was served on the Applicant on 16 February 2015.

Subject matter

3. The subject matter is the constitutional review of the Decision (Rev. no. 341/2014, of 6 January 2015) of the Supreme Court, which allegedly violated the rights guaranteed by Article 1 paragraph 2 [Definition of State]; Article 22 (7) [Direct Applicability of International Agreements and Instruments]; Article 37 paragraph 1 and 2 [Right to Marriage and Family] and Article 50, paragraphs 1 and 2 [Rights of Children] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 3 of the Convention on the Rights of the Child (hereinafter: the CRC).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 23 March 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 April 2015 the President of the Court, by Decision No. GJR. KI35/15, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI35/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajziri.

7. On 7 May 2015 the Court informed the Applicant about the registration of Referral and requested additional documentation from him. A copy of the Referral was sent to the Supreme Court.

8. On 1 July 2015 the President of the Court by Decision No. GJR. KI35/15 appointed Judge Altay Suroy as Judge Rapporteur, replacing Judge Kadri Kryeziu, whose mandate as a Judge ended on 26 June 2015, and by Decision No. KSH. KI35/15, the Deputy President Ivan Čukalović, replaced Judge Altay Suroy in the composition of the Review Panel.

9. On 11 September 2015 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 in administrative proceedings

10. On 2 August 2010 the Applicant together with his wife filed a request for the adoption of a male child (case no. 25-2337) with the Center for Social Work in Ferizaj (hereinafter: the CSW in Ferizaj).

11. On 13 May 2011 the CSW in Ferizaj addressed the CSW in Malisheva, requesting whether the latter had a male child waiting for adoption, as the CSW in Ferizaj did not have any children for adoption.

12. On 24 April 2012 the CSW in Malisheva notified (Notification no. 30/1197) the CSW in Ferizaj that they had a male child for adoption.

Summary of facts in civil proceedings

13. On 21 September 2012 the Applicant submitted a proposal to the Municipal Court in Ferizaj to adopt the child A. Z., who was in the care of the CSW in Malisheva.

14. On 30 May 2013 the Municipal Court in Ferizaj, by Decision Nd. no. 366/12, set a trial period of 3 (three) months to establish the relationship of adoption and obliged the CSW in Ferizaj to supervise the trial period from 31 May 2013 until 31 August 2013, and then to submit to the said court an evaluation report in writing.

Summary of facts in execution proceedings

15. On 31 May 2013 the Applicant submitted a proposal to the Basic Court in Gjakova, Branch in Malisheva, for execution of Decision Nd. no. 366/12 of the Municipal Court of Ferizaj, as the CSW in Ferizaj had not delivered the child to the Applicant, in order that the trial period is executed according to the order of the Municipal Court in Ferizaj.

16. On 3 June 2013 the Basic Court in Gjakova, Branch in Malisheva, rendered Decision E. No. 724, which permitted the execution proposed by the Applicant.

17. On 7 June 2013 the CSW in Malisheva filed an objection with the Basic Court in Gjakova, Branch in Malisheva, against execution of Decision Nd. no. 366/12 of the Municipal Court in Ferizaj, claiming that the said decision was rendered without the consent of the legal custodian and contrary to evaluations of the CSW in Ferizaj and the CSW in Malisheva.

18. On 10 June 2013 the Applicant filed with the Basic Court in Gjakova, Branch in Malisheva, a response to the objection and proposed that the objection filed by CSW be declared as ungrounded, and requested the execution of Decision Nd. no. 366/12 of the Municipal Court in Ferizaj.

19. On 12 June 2013 the Basic Court in Gjakova, Branch in Malisheva (Decision E. no. 724/13), approved the objection filed by CSW in Malisheva and decided to annul Decision E. no. 724/13 of 3 June 2013, which permitted the execution of Decision Nd. no. 366/12 of the Basic Court in Gjakova, Branch in Malisheva.

20. The Applicant filed an appeal with the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) against

Decision E. no. 724/13, of 12 June 2013 of the Basic Court in Gjakova, Branch in Malisheva, due to alleged violations of the law on execution procedure.

21. On 9 July 2013 the Court of Appeals (Decision, Ac. No. 1802/2013) rejected the Applicant's appeal as ungrounded and upheld Decision E. no. 724/13 of the Basic Court in Gjakova, Branch in Malisheva, of 12 June 2013.

22. On 16 July 2013 the Applicant submitted a proposal for filing of the request for protection of legality to the State Prosecutor against Decision Ac. no. 1802/2013 of the Court of Appeals.

23. On 26 July 2013 the State Prosecutor (Notification KMLC. No. 73/13) rejected the Applicant's proposal for filing the request for protection of legality because he did not find any grounded legal basis for exercising this legal remedy.

24. On 19 August 2013 the Applicant filed a request for reconsidering the proposal for filing the request for protection of legality with the Chief State Prosecutor.

25. On 26 August 2013, the Chief State Prosecutor notified that he stood by Notification KMLC. no. 72/13 of the State Prosecutor of 26 July 2013.

Summary of facts concerning the repetition of the court proceedings

26. The Applicant filed a request for repetition of the establishment of adoption relationship with the Basic Court in Ferizaj.

27. On 27 September 2013 the Basic Court in Ferizaj (Decision Nd. No. 366/12) rejected the Applicant's proposal to establish the adoptive relationship with respect to the child.

28. On 11 October 2013 the Applicant filed an appeal with the Court of Appeals against Decision Nd. no. 366 /12 of the Basic Court of Ferizaj due to essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.

29. On 12 September 2014 the Court of Appeals (Decision Ac. No. 3423/2013) rejected the Applicant's appeal as ungrounded and upheld Decision Nd. no. 366/12 of the Basic Court of Ferizaj, of 27 September 2013.

30. In its decision, the Court of Appeals reasoned that *"... in the provision of Article 179, paragraph 1 and 3 of the Family Law of Kosovo, it is explicitly stated that: "The adopting party shall only be a Kosovo citizen", namely, the resident residing in Kosovo, (because no person can have two permanent residences in two countries at the same time). Meanwhile, in paragraph 3 of the same Article, the following is stated: "The preliminary consent of the administrative bodies who deal with social work policies shall be required for adoption by a foreign citizen [...]", meanwhile, even if the proposers were citizens of Kosovo, again, the consent of the custodian, as well as the initiation of the procedure, through him, is to be done, anyway, while in the present case, neither of these was applied [...]".*

31. On 24 October 2014 the Applicant filed a request for revision with the Supreme Court against Decision Ac. no. 3423/2013 of the Court of Appeals due to essential violations of the contested procedure and erroneous application of the substantive law.

32. On 6 January 2015 the Supreme Court (Decision Rev. no. 341/2014) rejected the request for revision of the Applicant, as ungrounded, and found that based on the factual situation, the lower instance courts acted correctly when they rejected the Applicant's proposal for the adoption of a minor.

33. Moreover, the Supreme Court reasoned that:

> *"The Center for Social Work in Malisheva, in its written report ... did not give any recommendation to the court for adopting the minor. By this, the neccesary requirement provided by Article 169.1, in conjunction with Article 171 of the Family Law of Kosovo is not fulfilled because the consent of the Custodian of minor for the adoption, is missing.*
>
> *The proposers filed the request based on the adoption procedures as citizens of Kosovo, and not as persons who live abroad. Pursuant to the provisions in question, this Panel has been assigned for adoption out of Kosovo, in order to apply the Hague Convention on the Rights of the Child, in order to protect the child. The allegations in the revision, according to which the proposers are citizens of Kosovo, are ungrounded, due to the uncontested fact that the proposers ...have a permanent stay in FR of Germany, since 1993. Hence, the child should be adopted out of Kosovo and in the concrete case, the adoption is to be subject to a special procedure and the opinion of the special Panel- which functions at the Ministry of Labor and Social Welfare- is necessary...* ".

Applicant's allegations

34. The Applicant alleges that Decision Rev. no. 341/2014 of the Supreme Court and the decisions of the regular courts have violated the guaranteed rights as referred to in paragraph 3 of this document.

35. The Applicant further requests the Court to execute Decision Nd. no. 366/12, of the Municipal Court in Ferizaj, of 30 September 2013, which approved the trial period for the establishment of an adoptive relationship.

Admissibility of the Referral

36. The Court first examines whether the Applicant's Referral meets the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

37. In this regard, 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".*

38. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *[...]*
>
> *(d) the Applicant does not sufficiently substantiate his claim."*

39. In the present case, the Court notes that the Applicant alleges that Decision Rev. no. 341/2014 of the Supreme Court, of 6 January 2015, violated his rights guaranteed by Articles 1, 22, 37 and 50 of the Constitution and Article 3 of the CRC.

40. In fact, the Applicant alleges that the proceedings completed before the regular courts violated the legal provisions that regulate the field of family in the Republic of Kosovo.

41. Regarding the alleged violations of the abovementioned constitutional provisions, the Court considers that the Applicant merely states that there has been a violation of his rights and freedoms, without explaining how and why the facts that he presents constitute a violation of those rights.

42. The Court notes that the Applicant also alleges that there has been a violation of his rights guaranteed by Article 3 of the CRC, which states:

> *"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
>
> *2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
>
> *3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision".*

43. However, the Court considers that although the Applicant raised allegations of a violation of Article 3 of the CRC, he does not further argue as to how and why the regular courts violated this right, as this article is quite generalized and includes a range of rights and obligations arising from the Convention for the contracting states.

44. The Court notes that the Supreme Court considered each Applicant's allegation, explaining in detail, why the Applicant's request for

revision should be rejected as ungrounded, and the decision of the lower instance court be upheld.

45. Based on the case file, the Court considers that the Decision of the Supreme Court does not violate the rights guaranteed by the Constitution and international instruments, as alleged by the Applicant in this Referral.

46. Regarding the other allegations pertaining to the factual situation and the interpretation of the provisions of law, 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 courts or public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

47. The Court also reiterates that it does not act as a court of fourth instance in relation to the decisions taken by the regular courts or other public authorities. It is the role of regular courts or other public authorities to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz vs. Spain*, no. 30544/96, para. 28, ECtHR Judgment of 21 January 1999).

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

49. The Court further considers that the proceedings in the regular courts, including those in the Supreme Court, were fair and reasoned (see, *mutatis mutandis, Shub v. Lithuania*, no. 17064/06, ECtHR Decision of 30 June 2009).

50. The Court also notes that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see, *Vanek v. Slovak Republic*, No. 53363/99, ECtHR Decision of 31 May 2005) and he has not specified how the abovementioned Articles of the Constitution support his allegations, as provided by Article 113.7 of the Constitution and Article 48 of the Law.

51. In sum, the Court concludes that the Applicant's allegations of violation of his rights and freedoms are unsubstantiated and ungrounded. Therefore, his Referral must be declared inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) c), 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 30 October 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI28/15, Applicant Naser Dragusha and 4 other employees of the Kosovo Energy Corporation – Constitutional reassessment of Judgment Rev. No. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 May 2013

KI28/15, Decision to reject the Referral of 30 October 2015, published on 25 November 2015

Keywords*: Individual referral, inadmissible referral, the legal effect of decisions, the right to fair and impartial trial, right to work and exercise profession, judicial protection of rights*

In this case, the Applicants requested the Constitutional Court to reassess the Judgment of the Supreme Court that was once reviewed by the Constitutional Court, in Case KI163/13, and was declared inadmissible as manifestly ill-founded. The Applicants filed again a complaint with the Constitutional Court for violation of the right to fair and impartial trial and to judicial protection of rights.

The Constitutional Court noted that the present Referral is a repetition of previous referrals which have already been considered by the Court and added that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo. The Constitutional Court declared the Referral inadmissible in accordance with Rule 35 (2) of the Rules of Procedure.

DECISION TO REJECT THE REFERRAL
in
Case No. KI28/15
Applicant
Naser Dragusha and 4 other employees of the Kosovo Energy Corporation
Request for constitutional reassessment of Judgment Rev. No. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicants are: Mr. Naser Dragusha, Mr. Bajram Ahmeti, Mr. Mehmet Shaqiri, Mr. Shasivar Hashani and Ms. Selvete Preniqi (hereinafter: the Applicants), represented by Mr. Ilaz Çerkinaj, lawyer from Prishtina.

Challenged decision

2. The Applicants challenge Judgment Rev. 25/2012, of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 10 May 2013, which was served on them on 10 July 2013.

Subject matter

3. The subject matter is the request for constitutional reassessment of Judgment Rev. no. 25/2012 of the Supreme Court, of 10 May 2013, which, allegedly, violated the Applicants rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

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

Proceedings before the Constitutional Court

5. On 10 March 2015, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 April 2015, the President of the Court, by Decision no. GJR. KI28/15 appointed Judge Bekim Sejdiu as Judge Rapporteur and by Decision no. KSH. KI28/15, appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 6 May 2015, the Court informed the Applicants about the registration of the Referral and requested them to fill in the referral form and to attach to the Referral the last decision which they challenge and other relevant documents.

8. On 21 May 2015, the Applicants submitted the additional documents requested by the Court.

9. On 11 September 2015, after having considered the Report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. Regarding the same allegations raised by the Applicants, the Court has already decided in Case KI163/13, of 23 June 2014, and in Case KI165/14, of 9 July 2015.

The summary of facts regarding the Resolution on Inadmissibility of the Constitutional Court, in Case KI163/13, of 23 June 2014

11. On 18 October 2013, the Applicants Mr. Naser Dragusha, Mr. Mehmet Shaqiri, Mr. Bajram Ahmeti, Mr. Shasivar Hashani, Mr. Qazim Igrishta and Ms. Selvete Preniqi submitted a Referral to the Court,

requesting the constitutional review of Judgment Rev. no. 25/2012, of the Supreme Court, of 10 May 2013.

12. The Applicants in Case KI163/13 alleged that their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Protection of Judicial Rights] of the Constitution, have been violated.

13. The Court, in Case KI163/13, assessed that the Supreme Court regarding the Applicants' allegations clearly explained the relationship between the Applicants, as employees, and KEK as employer, based on the contract established with the consent of both parties, as well as the rights and obligations arising from such a contract; and moreover, the Supreme Court has also provided clear assessment of the decisions of the lower instance courts.

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

15. Consequently, the Court did not find violation of the Applicants' rights guaranteed by the Constitution and by ECHR, by Judgment Rev. no. 25/2012, of the Supreme Court, of 10 May 2013.

16. Based on the facts and circumstances presented in the Referral no. KI163/13, the Court, on 23 June 2014, concluded that the Applicants' Referral was declared inadmissible as manifestly ill-founded.

The summary of facts regarding the Resolution on Inadmissibility of the Constitutional Court, in Case KI165/14, of 9 July 2014

17. On 10 November 2014, the Applicant Bajram Ahmeti submitted the Referral to the Court, which was registered under no. KI165/14. Through this Referral, the Applicant challenged the same Judgment of the Supreme Court (Rev. no. 25/2012, of 10 May 2013), which was challenged by him also in Case KI163/13, of 23 June 2014.

18. The Applicant in Referral KI165/14 alleged that by challenged Judgment were violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution.

19. Taking into account all considered facts in Case KI165/14, the Court concluded that the subject matter of the Applicant's Referral was the same Judgment, on which constitutionality the Court had decided in Case KI163/13, on 23 June 2014. Therefore, the Applicant's Referral was declared inadmissible in accordance with Rule 36 (3) (d) of the Rules of Procedure.

Applicant's allegations

20. In the present Referral KI28/15, the Applicants allege that by the challenged Judgment were violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution.

Admissibility of the Referral

21. Before considering the Referral, the Court first examines whether it meets the procedural admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.

22. Regarding this Referral, the Court refers to Rule 32 (5) of the Rules of Procedure, which provides:

    "The Court may summarily reject a referral if the referral [...] is repetitive of a previous referral decided by the Court, or if the referral is frivolous".

23. The Court notes that the Applicants in the present case, in fact, request reassessment of Judgment Rev. no. 25/2012, of the Supreme Court, of 10 May 2013, which constitutionality was reviewed in Case KI163/13, of 23 June 2014, and in Case KI165/14, of 9 July 2015, where, as Applicant was Mr. Bajram Ahmeti, one of the Applicants in Case KI163/13 and of the present case KI28/15. In fact, the present Referral does not contain any new evidence, based on which, a matter that was not considered or that was evaded in the Court's previous proceedings would be considered now.

24. Therefore, the present referral is a repetition of previous referrals which have already been considered by the Court. The Court has no jurisdiction to decide on the same legal matters it has already decided on. The jurisdiction of the Constitutional Court regarding individual Referrals is clearly defined by Article 113.7 of the Constitution. By

individual acts of the 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 a 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 which it has already decided.

25. In addition, the Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

26. 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."*

27. As a conclusion, the Court considers that the Applicants' Referral is in fact a request for repetition of previous proceedings which have already been decided by the Court. Therefore, in accordance with Rule 32 (5) of the Rules of Procedure, the Referral is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Rule 32 (5) of the Rules of Procedure, on 30 October 2015, unanimously

DECIDES

I. TO REJECT the Referral;

II. TO NOTIFY this Decision to the Parties;

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

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Bekim Sejdiu	Arta Rama-Hajrizi

KI56/15, Applicant Qamil Haxhibeqiri - Constitutional review of Judgment Rev. no. 367/2014 of the Supreme Court of the Republic of Kosovo, of 20 February 2015

KI56/15, Resolution on Inadmissibility of 13 November 2015, published on 25 November 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, sale-purchase contract, priority of purchase, the protection of property*

The Supreme Court approved the request for revision of the responding party regarding the individual's right to a priority of purchase of an immovable property. The Applicant filed complaint with the Constitutional Court for violation of his right to property.

The Constitutional Court noted that the Supreme Court in its judgment comprehensively reasoned why the judgments of lower instance courts should be modified and the Applicant's statement of claim be rejected, and added that the proceedings before the Supreme Court was fair and reasoned. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI56/15
Applicant
Qamil Haxhibeqiri
Request for constitutional review of Judgment Rev. no. 367/2014 of the Supreme Court of the Republic of Kosovo, of 20 February 2015

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Qamil Haxhibeqiri, with permanent residence in Rahovec, represented by Mr. Gazmend Haxhibeqiri.

Challenged Decision

2. The Applicant challenges Judgment of the Supreme Court of Kosovo, Rev. no. 367/2014, of 20 February 2015 (hereinafter: the Supreme Court), which rejected the statement of claim approved by the lower instance courts, regarding the confirmation of the right of pre-emption of an immovable property.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment Rev. nr. 367/2014, which allegedly violated constitutional rights due to wrong interpretation of Article 20 of the Law on Transfer of Immovable Property (Official Gazette of KSAK no. 45/81, 29/86 and 28/88) by the Supreme Court.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 22 and

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

Proceedings before the Constitutional Court

5. On 7 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 June 2015, the President of the Court, by Decision No. GJR. KI56/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President by Decision No. KSH. KI56/15, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama -Hajrizi (member) and Bekim Sejdiu (member).

7. On 22 July 2015, the Court informed the Applicant about the registration of Referral and sent a copy of the Referral, pursuant to Article 22.2 of the Law, to the Supreme Court.

8. On 15 October 2015 the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. The request is related to the right of priority of purchase of immovable property(business premises, warehouse), described as a parcel in the surface area of 0.09,03 ha, registered in the cadastral books under no. 2695/1 as PL no. 139 CZ Rahovec. This parcel was sold to Sh. I. (the buyer) from Rahovec by T.V. (the seller) and the sale contract was certified in the Municipal Court in Mitrovica.

10. The Applicant alleges that the said immovable property had been rented by T.V. and he did not agree that the latter would be lawfully sold to Sh. I. Therefore, the Applicant claimed that the right of pre-emption belonged to him under the applicable law. The Applicant then filed a statement of claim with the Municipal Court in Rahovec.

11. On 12 September 2012, the Municipal Court in Rahovec, by Judgment, C. no. 183/08, approved the Applicant's statement of claim, by determining that the Applicant had the right of pre-emption of the immovable property, annulled the sale-purchase contract of the immovable property in question, certified by the Municipal Court in Mitrovica and obliged the respondent T.V. to conclude the contract

with the Applicant under the same conditions he had sold to the second respondent SH. I.

12. The respondents, against the Judgment of the Municipal Court in Rahovec, filed an appeal with the Court of Appeal of the Republic of Kosovo (hereinafter: the Court of Appeal), alleging substantial violations of the provisions of the law.

13. On 4 September 2014, the Court of Appeal (Judgment Ac. No. 5032/12), rejected as ungrounded the appeals of the respondents and upheld Judgment C. no. 183/08, of the Municipal Court of Rahovec, of 12 September 2008.

14. The respondents filed a request for revision with the Supreme Court against the Judgment of the Court of Appeal, because of an alleged essential violation of the contested procedure provisions and erroneous application of the substantive law.

15. On 20 February 2015, the Supreme Court (Judgment, Rev. no. 367/2014), approved as grounded, the respondents' request for revision and modified the judgments of lower instance courts, which were in favor of the Applicant's request.

16. Furthermore, the Supreme Court, reasoned:

> "*... considering that the contested plot, although by culture field, according to the above mentioned certificate of Rahovec Municipality, the latter is the construction land included in the urban plan of the city, and the lower instance courts have erroneously applied Articles 22 and 23 of this law when they found that the claimant had the right of preemption of this warehouse-premise. This premise-warehouse was constructed illegally by the first respondent and is not legalized, and it was sold together with the land this plot covers by the first respondent.*
>
> *Moreover, the first respondent, although pursuant to Article 20 of the above mentioned law was not obliged, as it is confirmed by the testimony of witness G. H., the claimant's son (the Applicant) had first made a verbal offer to the* claimant *to purchase this entire immovable property for the amount of DM 160.000,00, which the claimant had rejected with a counter offer of DM 120.000,00. Then the first respondent had sold this immovable property to the second respondent for the price of DM. 140.000,00. Thus, according to the assessment of the Supreme Court this fact also confirms that the first respondent did not violate the claimant's right of preemption of this immovable property*".

Applicant's allegations

17. The Applicant alleges that "*the Supreme Court has erroneously interpreted Article 20 of the Law on Transfer of Real Property by stating that only the Municipality has the right of preemption without clarifying the provision of Article 20, therefore due to this fact we shall provide in this Referral the complete text of Article 20 of this law:*

Article 20

"The ownership right holder, who intends to sell the land in construction area, is obliged to first offer it to the municipality in whose territory the land is located.

The provisions of Article 19 of this law shall also apply to transfer of forests and forestland in the construction areas.

The provision of paragraph 1 of this Article relates to construction land within an urban plan, as well to construction land in a designated construction area, determined by municipal council decision.

The declaration regarding the written offer for the land subject to sale shall be given by a body or an organization determined by municipal council".

18. In addition, the Applicant alleges that: *"From the evidence presented it is clearly noted that Article 20 of the Law on Transfer of Immovable Property was applied and the Municipality through its designated authority replied that it is not interested in purchase of the property which is offered for sale. Therefore, in this case we have no erroneous application of the substantive law."*

Admissibility of the Referral

19. Before considering the submitted Referral, the Constitutional Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

20. In the present case, the Court refers to Article 48 of the Law, which provides:

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

21. In addition, the Rule 36 (1) (d) of the Rules of Procedure, provides:

"(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded."

22. Furthermore, Rule 36 (2) of the Rules of Procedure, provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights;

[...]

23. In the present case, the Court notes that the subject matter before the regular courts was the Applicant's request for confirmation of the right of pre-emption of the abovementioned immovable property, which right was recognized to the Applicant by Judgment C. no. 183/08 of the Municipal Court in Rahovec. The Judgment of this Court was upheld by the Court of Appeal. However, the Supreme Court, deciding upon the request for revision filed by the respondents, rejected the Applicant's statement of claim as ungrounded by modifying the judgments of the lower instance courts, due to erroneous application of the substantive law.

24. Based on the case file, the Court notes that the Applicant's allegations concern the question of interpretation of the provisions of substantive law (legality) by the Supreme Court.

25. In this regard, the Court considers that the Applicant's allegations were not filed based on violations of the rights guaranteed by the Constitution (constitutionality). In fact, the Applicant alleged that the Supreme Court rejected his statement of claim by erroneously interpreting the provisions of the substantive law and that this,

according to him, constitutes a violation of the rights guaranteed by the Constitution and law.

26. In this respect, the Court reiterates that the issue of determination of facts and the interpretation of provisions of the substantive and procedural law are the responsibility of the regular courts and falls under their jurisdiction.

27. The Court also reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by regular courts or other public authorities. It is the role of regular courts or of other public authorities to interpret and apply pertinent rules of procedural and substantive law (See, *mutatis mutandis, Garcia Ruiz v. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28).

28. The Court can only consider whether the evidence before the regular courts or other authorities has been presented in such a manner that the proceedings in general, viewed in entirety, have been conducted in such a way that the Applicant had a fair trial (See, *inter alia,* Report of the European Commission of Human Rights in case *Edwards v. United Kingdom,* Application No. 13071/87, adopted on 10 July 1991).

29. The Court considers that the Supreme Court in its judgment comprehensively reasoned why the judgments of lower instance courts should be modified and the Applicant's statement of claim be rejected.

30. Therefore, the Constitutional Court does not find that the relevant proceedings before 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).

31. For the aforementioned reasons, the Court concludes that the Applicant's Referral in accordance with Article 48 of the Law, Rule 36 (1) d) of Rules of Procedure is to be declared as manifestly ill-founded and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and in accordance with Rule 36 (1) d), 36 (2) b) and 56 (2) of the Rules of Procedure, on 13 November 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this decision to the parties;

III. TO PUBLISH this decision in Official Gazette in accordance with article 20.4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI86/15, Applicant Armond Morina - Constitutional review of Decision Rev. E. no. 57/2014 of the Supreme Court of 17 November 2014

KI86/15, Resolution on Inadmissibility of 7 July 2015, published on 25 November 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, the film project subsidies, suspension of financing*

The Supreme Court rejected as ungrounded the request for revision of the Applicant regarding the obligation to return the funds of a film project. The Applicant filed complaint with the Constitutional Court for violation of his right to fair and impartial trial.

The Constitutional Court noted that the Applicant has not provided any procedural or substantive reasoning in his Referral, because he only mentions the constitutional provisions, without further explanation about how the violations occurred, and added that the decisions of the regular courts were fair and reasoned. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI86/15
Applicant
Armond Morina
Constitutional review of Decision Rev. E. no. 57/2014 of the Supreme Court of 17 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Armond Morina residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision, E. Rev. no. 57/2014, of the Supreme Court, of 17 November 2014, by which the Supreme Court rejected the Applicant's revision as ungrounded and upheld the Decision of the Court of Appeal.

3. This decision was served on the Applicant on 26 February 2015.

Subject matter

4. The subject matter is the request for constitutional review of the challenged decision, which, allegedly, violated Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental freedoms (hereinafter: ECHR).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 25 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 3 August 2015, the President of the Court by Decision GJR. KI86/15 appointed Judge Robert Carolan as Judge Rapporteur and by Decision KSH. KI86/15 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.

8. On 17 August 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 14 October 2015, 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. The Applicant is the owner and director of the production company "Morina Films".

11. The Applicant, namely his production company, in 2006, requested from the Ministry of Culture, Youth and Sports of Kosovo (hereinafter: MCYS) financial assistance for the implementation of the film project "Mysafir në sofër".

12. On 19 September 2008, the MCYS signed the contract with the Applicant. Based on this contract, the MCYS as a donor was obliged to subsidize the film project *"Mysafir në sofër"*.

13. On 20 October 2008, the MCYS transferred the funds allocated for the implementation of the first stage of the film project *"Mysafir në sofër"*.

14. On 27 August 2010, the MCYS informed the Applicant that, based on the findings of the MCYS Audit, and the report of the MCYS Commission, it was determined that the funds allocated for the implementation of the film project *"Mysafir në sofër"* have not been spent in accordance with the contract, therefore, the further financing of this project is terminated, thereby ordering the Applicant to return the funds, paid earlier for the implementation of the first stage of the project, to the Kosovo budget .

15. After the abovementioned notification was served on the Applicant, the MCYS filed a lawsuit with the District Commercial Court in Prishtina, with a statement of claim that the Applicant (Morina Films) returns the funds for the implementation of the first stage of the film project *"Mysafir në sofër"*.

16. On 28 February 2012, the District Commercial Court in Prishtina (Judgment II. C. no. 13/2011) approved as grounded the lawsuit of the MCYS, and ordered the Applicant to return to MCYS the funds, including the legal interests and the contested procedure costs.

17. On 21 May 2012, the Applicant, dissatisfied with the abovementioned Judgment, filed an appeal with the District Commercial Court in Prishtina.

18. On 22 August 2012, the District Commercial Court in Prishtina rejected the Applicant's appeal as out of time.

19. Against the Decision of the District Commercial Court in Prishtina, the Applicant filed an appeal with the Court of Appeal.

20. On 20 September 2012, the Applicant submitted the Referral to the Court. This Referral was registered under the registration number KI16/13.

21. On 16 April 2013, the Applicant requested the Court to suspend the proceedings in the case KI16/13 until the final decision of the regular courts is rendered.

22. On 14 June 2014, the Court renders the decision on striking out the Referral KI16/13, as in the aforementioned set of circumstances has not found any reason to decide the Referral.

23. On 18 July 2014, the Court of Appeal [Decision Ae. no. 412/2012] rejected the Applicant's appeal as ungrounded and upheld the Decision of the District Commercial Court in Prishtina.

24. Dissatisfied with the Decision of the Court of Appeal, the Applicant filed a revision with the Supreme Court.

25. On 17 November 2014, the Supreme Court [Decision E. Rev. no. 57/2014] rejected as ungrounded, the request for revision of the Applicant.

Applicant's allegations

26. The Applicant alleges that the challenged decision violated the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.

27. The Applicant requests the Court:

> *"To annul the courts' decisions, namely the decision of the Supreme Court and to remand the case for retrial and reconsideration due to violation of the rights guaranteed by the Constitution and the Convention [...]".*

Admissibility of the Referral

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

29. In this respect, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

> Article 48 of the Law
>
> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*
>
> Rule 36 of the Rules of Procedures
>
> *"[...]*
>
> *(1) The Court may consider a referral if:*
>
> > *[...]*
> > *(d) the referral is prima facie justified or not manifestly ill-founded.*

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim".

30. As stated above, the Applicant alleges that the decision of the Supreme Court, the decision of the Court of Appeal and the judgment of the District Commercial Court were rendered in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.

31. In fact, the Applicant alleges, in general, referring to the decisions of the regular courts, that he was not afforded *"a fair and impartial trial"* before the regular courts.

32. The Court notes that the Applicant has not provided any procedural or substantive reasoning in his Referral. He only mentions the abovementioned articles of the Constitution and the ECHR, without further explanation about how the violations occurred.

33. In this regard, the Court notes that the District Commercial Court rejected the Applicant's appeal against the first instance judgment, considering that the deadline for filing such an appeal has expired. Nonetheless, the Applicant did not provide any evidence in support of his allegations.

34. The Court also notes that the Court of Appeal reasoned its decision regarding the Applicant's allegation "*Due to the fact that Judgment C. no. 13/11, of 28.02.2012 was received by the authorized person of the respondent on 11.05.2012, while the appeal was filed on 21.05.2012, after the expiry of the time limit of 7 days, provided by Article 509.1, under c) of the LCP, the Court of Appeal of Kosovo found that the challenged judgment does not violate the law to the detriment of the respondent and that it is fair and grounded*", holding that the District Commercial Court correctly applied the substantive law, when it rejected the Applicant's appeal against the first instance judgment.

35. In addition, the Court notes that the Supreme Court rejected the Applicant's request for revision as ungrounded, and upheld in entirety the reasoning of the District Court and the Court of Appeal.

36. The Court considers that the proceedings before the District Court, Court of Appeal and Supreme Court were fair and that the decisions were thoroughly justified and reasoned.

37. Therefore, the Constitutional Court concludes that the proceedings, 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*, no. 13071/87, Report of the European Commission of Human Rights of 10 July 1991 and, *mutatis mutandis*, *Shub v Lithuania*, no. 17064/06, ECHR, decision of 30 June 2009).

38. In addition, the Applicant has not accurately explained how and why the challenged decisions violate the rights and freedoms guaranteed by the Constitution, nor did he give evidence to justify the allegation of such violation.

39. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the public authorities, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).

40. The Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. The role of the regular courts or other public authorities is to interpret and apply, when is possible, the pertinent rules of both procedural and substantive law (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case: KI70/n of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

41. Therefore, the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution. (See *Vanek v. Slovak Republic*, No. 53363/99, ECHR, Decision of 31 May 2005) and did not specify how the Article of the Constitution and Article of ECHR referred by him, support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

42. In sum, the Court concludes that the Applicant's allegations of a violation of the right to fair and impartial trial are ungrounded, are not proven and therefore, manifestly ill-founded.

43. Based on the foregoing reasons, the Court considers that, in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) (d) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 of the Law, and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 7 July 2015, 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**
Robert Carolan	Arta Rama-Hajrizi

KI25/15, Applicant Faik Azemi - Request to return to previous situation the Resolution on Inadmissibility KI129/14, of the Constitutional Court, of 25 November 2014

KI25/15, Resolution on Inadmissibility of 10 September 2015, published on 2 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, return to the previous situation*

In Case KI129/14, the Constitutional Court declared the Applicant's Referral inadmissible because it was out of time. The Applicant submitted again a referral to the Constitutional Court, requesting a return to the previous situation, claiming that his referral was out of time due to fault of the regular courts and not due to his fault.

The Constitutional Court noted that in this case were not met the conditions to return to previous situation as it is provided in Article 50 of the Law, because the Applicant failed to substantiate his claim and has not presented any evidence which indicate how and why he failed to submit the Referral within the provided time limit, without his fault. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded in accordance with Article 50 of the Law and Rule 36 (2) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI25/15
Applicant
Faik Azemi
Request to return to previous situation the Resolution on Inadmissibility KI129/14, of the Constitutional Court, of 25 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Faik Azemi from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant requests the return to previous situation in terms of the provided time limit, of the Resolution on Inadmissibility KI129/14, of the Constitutional Court, of 25 November 2014.

3. The Applicant has attached to this Referral several of his requests for access to the case file addressed to the regular courts. The Applicant had also attached the said documents in his previous Referral KI129/14.

Subject Matter

4. The subject matter is the request for return to previous situation of the Referral KI129/14, of 25 November 2014.

Legal Basis

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

Proceedings before the Constitutional Court

6. On 9 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 21 April 2015, the President of the Court by Decision no. GJR. KI25/15 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI25/15 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Enver Hasani and Arta Rama-Hajrizi.

8. On 1 July 2015, by Decision GJR. KI25/15, the President of the Court appointed Judge Ivan Čukalović as a member of the Review Panel, replacing Judge Enver Hasani, whose mandate with the Constitutional Court ended on 26 June 2015.

9. On 21 July 2015, the Court informed the Applicant about the registration of the Referral.

10. On 20 September 2015, 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 9 March, 2015, the Applicant submitted the Referral to the Court in which he requested the Court to return to previous situation in respect of the provided deadline of the Resolution on Inadmissibility KI129/14, of 25 November 2014, in which he appears as the Applicant.

12. The Applicant attached to the new Referral the same documentation that was attached to the Referral KI129/14, of 25 November 2014.

Summary of facts regarding Resolution on Inadmissibility KI129/14, of the Constitutional Court, of 25 November 2014

13. On 29 December 2008, the Municipal Court in Prishtina (Judgment C1. No. 515/2007) approved the Applicant's statement of claim that his employment relationship was terminated unlawfully and ordered the Municipality of Prishtina to recognize all the rights of the Applicant for the period from 1 October 2003 until 31 December 2007.

14. *[...]*

15. On 12 August 2013, the Court of Appeal of Kosovo (Decision CA. No. 3581/2012) rejected as ungrounded the appeal of the respondent Municipality of Prishtina, and upheld the Decision (C No. 1816/09) of the Municipal Court in Prishtina.

16. *[...]*

17. On 4 February 2014, the Supreme Court of Kosovo (Decision Rev. No. 270/2013) approved the revision filed by the Municipality of Prishtina, quashed the Decision of the Court of Appeal of Kosovo and remanded the case for retrial. This decision was served on the Applicant on 20 March 2014.

18. On 8 April 2014, the Court of Appeal of Kosovo, by Decision AC. no. 3779/13 rejected the appeal of the debtor Municipality of Prishtina and upheld Decision E. No. 1220/13, of the Municipal Court in Prishtina, of 12 November 2013.

19. On 13 August 2014, the Applicant submitted the Referral to the Constitutional Court, challenging the Decision [Rev. No. 270/2013] of the Supreme Court of 4 February 2015, received on 20 March 2015.

20. On the basis of all the facts and circumstances presented in the Referral, the Court on 25 November 2014, concluded that the Applicant's Referral, in accordance with Rule 36 (1) (c) of the Rules of Procedure, is declared inadmissible as out of time.

Applicant's Allegations

21. The Applicant alleges that:

> *„When I was allowed to see the case file after 10 requests, I noticed that the Supreme Court, unfairly and in obstinate and arbitrary proceedings, rendered the unlawful decision which I challenged before the Constitutional Court."*

22. The Applicant further alleges that in his previous Referral KI129/14, he requested in addition that his Referral be considered as admissible

with regard to the provided time limit but the Court did not register and review that Referral.

23. The Applicant requests the Court:

> *„that based on Article 50 of the Law on the CC, approves my referral for returning to the previous situation and render a decision based on merits, namely, to annul the Decision of the Supreme Court, challenged in case KI129/14."*

Assessment of the Admissibility of Referral

24. Before considering the Applicant's Referral, the Court first assesses whether the Applicant's Referral has met the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. In this respect, the Court refers to Rule 36 (1) (d) and (2) of the Rules of Procedure, which provide:

> *„36 (1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d)the Referralis prima facie justified or not manifestly ill-founded.*
>
> *(2) The Court shall decrale a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *b) thepresentedfactsdonotinanywayjustifytheallegationofaviolationofthe constitutional rights, or*
>
> *[...]*
>
> *d) the Applicant does not sufficiently substantiate his claim;"*

26. The Court notes that the Applicant refers to Article 50 of the Law, which provides:

> *"If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The*

claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired."

27. The Court fully reviewed the documents attached to this Referral KI129-14. The Court notes the fact that the Applicant in his previous Referral KI129-14 requested subsequently that his Referral be considered as admissible with regard to the provided time limit, and that on three occasions (25 September 2014, 22 October 2014 and 30 October 2014) he submitted to the Court certain documents that have been registered by the Court.

28. The Court also notes that the Applicant on 20 March 2014 received Decision [Rev. No. 270/2013] of the Supreme Court of 4 February 2014. The Municipal Court in Prishtina confirmed this fact by attaching a copy of the return paper. The Applicant along with the additional documentation stated that he did not have access to the case files before the regular courts, and in fact the Supreme Court Decision was served on the Applicant on 20 March 2014, and by this the Applicant was aware of the content of the Supreme Court Decision but simply failed to file the Referral within the provided time limit.

29. In this respect, the Court held that in this specific case were not met the conditions to return to previous situation as it is provided in Article 50 of the Law, because the Applicant failed to substantiate his claim and has not presented any evidence which indicate how and why he failed to submit the Referral within the provided time limit, without his fault.

30. The Court finds that the Applicant's Referral is manifestly ill-founded, in accordance with Article 50 of the Law and Rules 36 (1) d) and 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 50 of the Law on Constitutional Court and Rule 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 10 September 2015, 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 on the Constitutional Court;

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI77/15, Applicant Naser Foniqi - Constitutional Review of Decision KGJK/No. 18/2015 of Kosovo Judicial Council, of 11 March 2015

KI77/15, Resolution on Inadmissibility of 12 November 2015, published on 2 December 2015

Keywords: *Individual referral, non-exhaustion of legal remedies, the right to fair and impartial trial, principles of the judicial system, the principle of subsidiarity, the disciplinary procedure, code of ethics, abuse of judicial functions*

The Disciplinary Committee of the Kosovo Judicial Council rejected the appeal of the Applicant regarding the reprimand for abuse of the judicial function. The Applicant filed appeal with the Constitutional Court requesting the annulment of the decision of the Disciplinary Committee of the Kosovo Judicial Council.

The Constitutional Court noted that the Applicant has not exhausted all legal remedies and added that the principle of subsidiarity requires that the Applicant exhaust all legal remedies provided by the law. The Constitutional Court declared the Referral inadmissible because of non-exhaustion of legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI77/15
Applicant
Naser Foniqi
Constitutional Review of Decision KGJK/No. 18/2015 of Kosovo Judicial Council, of 11 March 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Naser Foniqi with residence in Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision [KGJK/no. 18/2015] of Kosovo Judicial Council (hereinafter: KJC), of 11 March 2015.

Subject Matter

3. Subject matter is the constitutional review of challenged decision, which allegedly violated Article 102 [General Principles of the Judicial System], Article 107 [Immunity] of the Constitution of the Republic of Kosovo, as well as the Law on Courts and the Regulation on Internal Organization of the Courts.

Legal Basis

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

Proceedings before the Constitutional Court

5. On 16 June 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 August 2015 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 15 October 2015 the Court informed the Applicant and KJC about the registration of the Referral.

8. On 12 November 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

9. The Applicant is a judge of the Basic Court in Prishtina. On 11 April 2014 the Office of the Disciplinary Counsel (hereinafter: ODC) initiated disciplinary proceedings against the Applicant before KJC, due to unprofessional conduct, abuse of judicial functions and violation of applicable Code of Ethics.

10. On 1 August 2014 the KJC after the conducted proceedings [Decision DK. no. 10/2014] decided to reprimand the Applicant for unprofessional conduct, abuse of judicial function and violation of the applicable Code of Ethics.

11. On 8 September 2014, dissatisfied with the abovementioned decision, the Applicant filed an appeal with the second instance committee of the KJC. In addition to the Applicant, the ODC also filed an appeal against the aforementioned decision.

12. On 11 March 2015 the second instance committee of KJC [Decision KGJK/No. 18/2015] rejected the appeals of the Applicant and of the ODC as ungrounded and upheld the Decision of the Disciplinary Committee of the KJC.

Applicant's Allegations

13. The Applicant alleges that the KJC, by the challenged decision has violated his rights guaranteed by Article 102 [General Principles of the

Judicial System] and Article 107 [Immunity] of the Constitution of the Republic of Kosovo.

14. The Applicant requests the Court:

> *„By this Referral, I want that the Constitutional Court of Kosovo annuls Decision KGJK. no. 18/15 of Kosovo Judicial Council, of 11 March 2015 [...]".*

Admissibility of the Referral

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

16. 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."*

17. The Court also refers to Article 47.2 of the Law, which provides that:

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

18. Furthermore, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which states that:

> *„The Court may consider a referral if all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".*

19. In this regard, the Court recalls that the Applicant claimed that the KJC by challenged decision violated his rights guaranteed by the Constitution of the Republic of Kosovo.

20. In the present case, it can be noted that the Applicant has not exhausted all legal remedies in accordance with Article 113.7 of the Constitution, considering that the Applicant had the right to appeal against the challenged decision of the KJC before the Department for Administrative Matters of the Basic Court.

21. The Court further recalls that the principle of subsidiarity requires that the Applicant exhaust all legal remedies provided by the law.

22. The rationale for the exhaustion rule is to afford competent authorities, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that Kosovo legal order provides an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo,* KI41/09, of 21 January 2010, and see *mutatis mutandis,* ECHR, *Selmouni vs. France,* no. 25803/94, Decision of 28 July 1999).

23. Therefore, the Court considers that the Applicant's Referral is premature, because of non-exhaustion of all available legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

24. It follows that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 12 November 2015, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

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

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI132/15, Applicant Visoki Decani Monastery- Request for constitutional review of two Decisions of 12 June 2015, Nos. AC-I-13-0008 and AC-I-13-0009, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters

KI132/15, Decision on Interim Measure of 12 November 2015, published on 3 December 2015

Keywords: *Individual referral, interim measure, irreparable damage, public interest, right to a fair and impartial trial, judicial protection of rights, protection of property, public interest*

In this case, the Applicant requested the Constitutional Court to impose an interim measure with respect to certain challenged cadastral parcels alleging that it would suffer unrecoverable damage. The Applicant also complained about delays in proceedings that had lasted for fifteen (15) years, and furthermore, the property dispute was transferred from the regular courts to the Special Chamber of the Supreme Court to refer back the case again to the regular courts.

The Constitutional Court found that considering the complexity of the case and the need for a thorough analysis of the alleged violations of fundamental rights, the Court considers that there are also substantial reasons of a public interest nature to justify the granting of an interim measure. The Constitutional Court decided to approve the request for the imposition of interim measures, in accordance with Article 27 of the Law and Rule 55 (4), (5) and (6) of the Rules of Procedure.

DECISION ON INTERIM MEASURE
in
Case No. KI132/15
Applicant
Visoki Dečani Monastery
Request for constitutional review of two Decisions of 12 June 2015,
Nos. AC-I-13-0008 and AC-I-13-0009, of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The referral was submitted by Visoki Dečani Monastery (hereinafter: the Applicant), which is represented by Dragutin (Sava) Janjić, Abbot of Visoki Dečani Monastery.

Challenged decision

2. The Applicant challenges two Decisions, Nos. AC-I-13-0008 and AC-I-13-0009, both dated 12 June 2015, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Appellate Panel), which decisions were served on the Applicant on 9 July 2015.

Subject matter

3. The Applicant requests the constitutional review of the two above-mentioned decisions which have allegedly violated the Applicant's rights, as guaranteed by Articles 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], and Article 54 [Judicial

Protection frights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 13 [Right to Legal Remedies] of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

4. In addition, the Applicant requests from the Court to impose an interim measure, namely that any judicial proceedings, actions or decisions of public authorities in relation to this constitutional complaint be suspended until the final decision of the Constitutional Court (hereinafter: the Court) on this Referral.

Legal basis

5. The Referral is based on Articles 113.7 and 116.2 of the Constitution, Articles 27 and 47 of Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54 and 55 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 03 November 2015the Applicant submitted the Referral to the Court.

7. On 04 November 2015 the President of the Court, by Decision GJR.KI132/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, by Decision KSH.KI132/15, the President of the Court appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova (member) and Arta Rama-Hajrizi (member).

8. On 04 November 2015 the Court notified the Applicant of the registration of the Referral. On the same date the Court notified the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Special Chamber) of the registration of the Referral and requested the Special Chamber to provide the Court with a number of enumerated additional documents.

9. On 05 November 2015 the Special Chamber submitted the requested documents to the Court.

10. On 09 November 2015 the Applicant submitted additional documents to the Court.

11. On 12 November 2015 the Judge Rapporteur recommended to the Court to grant an interim measure. On the same date, the Court

decided unanimously to grant an interim measure until 29 February 2016.

Brief summary of facts

12. In its submissions, the Applicant states that it was the owner of substantial parcels of land which were confiscated and nationalized by the Socialist Federal Republic of Yugoslavia in 1946.

13. The Applicant submits further that in 1997 the government of the Republic of Serbia made a gift of a portion of this land to the Applicant. This gift concerned a parcel of 23.5 hectares immediately adjacent to the Applicant's premises and an additional parcel of 2 hectares located in the centre of Deçan/Dečane municipality.

14. On 26 April 2000, two Socially-Owned Enterprises, named Iliria and APIKO, respectively, filed a claim with the Municipal Court in Deçan/Dečane against the Applicant, the Municipality of Deçan/Dečane and the Republic of Serbia, requesting the annulment of the gift of land to the Applicant of 1997.

15. Various court proceedings ensued until, on 7 December 2007, the Kosovo Trust Agency (hereinafter: the KTA) applied for the removal of the case from the Municipal Court pursuant to Section 4.5 of UNMIK Regulation No. 2002/13, based on the KTA's exclusive jurisdiction over Socially-Owned Enterprises and their assets.

16. Various proceedings ensued before the Special Chamber. On 27 December 2011, in an interim appeal, the Appellate Panel of the Special Chamber determined that the KTA, as represented by the Office of Legal Affairs of UNMIK, and the Applicant were the exclusive authorized parties to the case.

17. On 27 December 2012, the Specialized Panel of the Special Chamber ruled in two Judgments, No. SCC-0226 and No SCC-0227, with identical text, by which the claims of the Socially-Owned Enterprises were rejected as ungrounded. The Ownership Panel confirmed that the interim decision of the Appellate Panel on authorized representation in the case had become *res judicata*.

18. On 23 and 24 January 2013 respectively, the Privatization Agency of Kosovo (hereinafter: PAK) and the two Socially-Owned Enterprises Apiko and Iliria appealed from judgments Nos. SCC-0226 and SCC-0227. On 29 January 2013 the municipality of Deçan/Dečane joined the appeals.

19. On 12 July 2015, the Appellate Panel rendered the final Decisions Nos. C-I-13-0008/C-I-13-0009. The Appellate Panel decided that: (1) the appeals were grounded; (2) the judgments of the Specialized Panel Nos. SCC-08-0226 and SCC-08-0227 were annulled; and, (3) the Special Chamber was not competent to adjudicate this dispute. In accordance with this conclusion, the Appellate Panel remanded this matter and the issues in dispute to the Basic Court in Pejë/Peć - Branch in Deçan/Dečane.

Applicant's request and the request for an interim measure

20. The Applicant requests the constitutional review of two Decisions, Nos. AC-I-13-0008 and AC-I-13-0009, both dated 12 June 2015, of the Appellate Panel of the Special Chamber. The Applicant alleges that these decisions violated the Applicant's rights as guaranteed by Articles 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], and Article 54 [Judicial Protection frights] of the Constitution, and Article 13 [Right to Legal Remedies] of the ECHR.

21. Regarding the right to a fair trial, the Applicant argues that this was violated in two ways, namely that:

    (1) the right to legal certainty was violated in two ways because:

    (a) the Appellate Panel admitted certain parties to submit an appeal where the Appellate Panel had previously decided that only the Applicant and the KTA were authorized parties in the case. The Appellate Panel admitted this appeal and adjudicated it on its merits, despite the fact that these parties were not authorized to submit this appeal; and

    (b) because the Appellate Panel applied a new interpretation of the applicable laws whereby it decided that the Special Chamber had never had jurisdiction over the case, despite the fact that the Special Chamber, at all levels (in the Trial Panel, Specialized Panel and Appellate Panel), had previously accepted its jurisdiction and had been making decisions on the case since 2008.

    (2) the right to a determination of civil rights and obligations within a reasonable time was violated because the proceedings have already taken more than 15 years and now the Special Chamber has referred the case back to the Basic Court where it must be restarted *de novo*.

22. The Applicant also requests the Court to:

> *"Grant the interim measure in this case, and to prohibit any kind of proceedings by any court or public authority, in the cases related to this constitutional complaint, until the procedure before the Constitutional Court of the Republic of Kosovo is completed."*

23. In support of this request for interim measure the Applicant alleges that officials of the cadastral office in the municipality of Deçan/Dečane, without legal basis or authorization, had previously changed the data in the municipal cadastre related to the disputed parcels of land, and registered them in the names of the newly created Socially-Owned Enterprises Apiko and Iliria. The Applicant also alleges that this cadastral office has refused to implement the binding Executive Decision of the SRSG of 22 August 2008 (UNMIK/ED/2008/16) to return the registration in the cadastre to the previous situation, with the properties to again be registered in the name of the Visoki Dečani Monstery, pending the conclusion of the judicial proceedings.

24. Furthermore, the Applicant claims that:

> *"There is a real risk that by new acts of the court in Deçan/Dečane, and, in particular, by imposition of interim measures [by the court in Deçan/Dečane], which have already been requested in the proceedings before the [Special Chamber] of the Supreme Court, or by new actions of the cadastre in Deçan/Dečane to the detriment of Visoki Dečani Monastery, which would be implemented through the Basic Court in Deçan/Dečane, the Applicant would suffer unrecoverable damage, [...]"*

Assessment of the request for an interim measure

25. In order for the Court to grant an interim measure in accordance with Article 27 of the Law and Rule 55 (4), (5) and (6) of the Rules of Procedure, it must be determined that:

> *Article 27 of the Law*
>
> *1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*

Rule 55 (4) of the Rules of Procedure:

[…]

(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.

Rule 55 (5) of the Rules of Procedure

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".

Rule 55 (6) of the Rules of Procedure (excerpt):

[…] No decision granting interim measures may be entered unless the expiration date is specified; however, expiration dates may be extended by further decision of the Court. […]

26. In this respect, the Court notes that the Applicant has submitted extensive arguments regarding the alleged violations of its fundamental rights.

27. The Court also notes that the facts of this case reveal a set of legal and judicial proceedings stretching back over a period of more than 15 years, which exhibit significant complexities in the assessment and interpretation of laws given by respective public and judicial authorities.

28. As such, the Court considers that the Applicant has presented a prima facie case on the merits of the referral within the meaning of Rule 55, paragraph 4, under (a), of the Rules.

29. The Court notes that the Applicant claims that it must rely on the ability to cultivate the disputed parcels of land for its sustenance. The Applicant also claims to be concerned about the potential damage that could be caused to its economic well-being as a result of actions that

could be taken by the Basic Court or other public authorities with respect to this land.

30. Given these circumstances, the Court considers that there are substantial reasons to accept that the Applicant would suffer unrecoverable damage within the meaning of Rule 55, paragraph 4, under b, of the Rules that warrant a delay in the implementation of any further judicial proceedings regarding the disputed parcels of land pending the Court's final determination on the referral.

31. In addition, the Court is aware that the Applicant has been recognized as a UNESCO World Heritage Site. Furthermore, the Court notes that there are multiple public authorities and semi-public bodies involved this case, and any further decisions in the case could lead to more complications and further unrecoverable damages for various interested parties to the case.

32. In this light, and considering the complexity of the case and the need for a thorough analysis of the alleged violations of fundamental rights, the Court considers that there are also substantial reasons of a public interest nature within the meaning of Rule 55, paragraph 4, under (c) to justify the granting of an interim measure.

33. Therefore, the Court, without prejudice to any further decision which will be rendered by the Court, on the admissibility or merits of the referral in the future, concludes that the request for interim measures must be accepted as grounded in order to prevent unrecoverable damages to the Applicant and to protect the public interest.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law and Rule 55 (4), (5) and (6) and Rule 56 (c) of the Rules of Procedure, on 12 November 2015, unanimously

DECIDES

I. TO GRANT an interim measure, namely, that any judicial proceedings, actions or decisions of public authorities in relation to this constitutional complaint be suspended;

II. That this interim measure shall run until 29 February 2016.

III. TO NOTIFY this Decision to the Parties;

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

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Robert Carolan	Arta Rama-Hajrizi

KI21/15, Applicant Halim Ibrahimi - Constitutional Review of Judgment Rev. No. 179/2014 of the Supreme Court of the Republic of Kosovo of 8 October 2014

KI21/15, Resolution on Inadmissibility of 11 September 2015, published on 7 December 2015

Keywords*: Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, right to work and exercise profession, disciplinary measures, employment relationship, a legitimate expectation*

The Supreme Court rejected the request for revision as unfounded submitted by the Applicant regarding his reinstatement to the job position "officer of the private sector". The Applicant complained to the Constitutional Court, alleging a violation of the right to work and exercise profession.

The Constitutional Court noted that the Applicant, factually and legally, did not have any "legitimate expectation" to be reinstated to a position which he did not hold before, and which did not even exist within the organizational scheme of his employer, and added that the proceedings of the regular courts were not unfair or arbitrary. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI21/15
Applicant
Halim Ibrahimi
Constitutional Review of Judgment Rev. No. 179/2014 of the Supreme Court of the Republic of Kosovo of 8 October 2014

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge.

Applicant

1. The Referral was submitted Mr. Halim Ibrahimi represented by Mr. Ramiz Suka, a lawyer practicing in Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment Rev. no. 179/2014 of the Supreme Court of 8 October 2014. This decision was served on the applicant on 17 November 2014.

Subject Matter

3. Subject matter is the constitutional review of the Judgment Rev. no. 179/2014 of the Supreme Court of 8 October 2014.

Legal Basis

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

Proceedings before the Constitutional Court

5. On 25 February 2015 the Applicant submitted the Referral through postal service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 March 2015 the President of the Court by Decision No. GJR. KI21/15 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI21/15 appointed the Review Panel composed of judges Altay Suroy, Snezhana Botusharova and Kadri Kryeziu.

7. On 2 April 2015 the applicant was notified about the registration of the referral and a copy was sent to the Supreme Court.

8. On 27 April 2015 the applicant was asked to present power of attorney for his representative as well as evidence about the date of service of the challenged judgment. On the same date, the Basic Court in Prishtina was notified about the registration of the referral with the request to provide evidence pertinent to the date of service of the challenged judgment.

9. On 26 June 2015 the mandate of Judge Kadri Kryeziu ended. On 1 July 2015, the President of the Court by Decision No. KSH. KI21/15 appointed Judge Ivan Čukalović as member of the Review Panel instead of Judge Kadri Kryeziu.

10. On 4 August 2015, the applicant was again asked to present the power of attorney for his representative and to sign the referral form.

11. On 14 August 2015, the applicant submitted the power of attorney and signed the referral form.

12. On 11 September 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. From the documents contained in the referral it appears that the applicant had established employment relationship with company PUC “Higjieno-Teknika” in Prishtina in 1981 in the position of refuse collector. From 1981 until 2002 the applicant rendered his services for the PUC “Higjieno-Teknika” in various job positions.

14. On 14 March 2001 the PUC "Higjieno-Teknika" by Decision No. 228 assigned the applicant to the position of keeper of the cemetery which was formally accepted by the applicant (contract no. 162 of 27 February 2002). This decision was a result of disciplinary proceedings against the applicant because he had refused to fulfill his obligations arising from his previous position in addition to his request to work in an office position as "officer of the private sector".

15. On an unspecified date the applicant filed a statement of claim with the Municipal Court in Prishtina against the PUC "Higjieno-Teknika", thereby claiming annulment of Decision 228 of 14 March 2001 and requesting reinstatement to his work and duties as an officer of the private sector.

16. On 30 January 2012 the Municipal Court in Prishtina, by Judgment C. no. 1533/09, rejected the applicant's statement of claim whereby he requested annulment of Decision No. 228 of 14 March 2001 and reinstatement to his work and duties as an "officer of the private sector". The Municipal Court in Prishtina reasoned, *inter alia*, that the applicant had accepted the position of keeper of cemetery by signing contract no. 162 of 27 February 2002, that the applicant never had a contract with his employer regarding the position of the "officer of private sector", that position of the "officer of private sector" did not even exist, and that, his statement of claim for reinstatement as an "officer of private sector" is in contradiction to the evidence he provided to the basic court.

17. On an unspecified date, the applicant filed a complaint with the Court of Appeal of Kosovo against the above stated decision of the trial court. The applicant alleged, *inter alia*, essential violations of the provisions of the contested procedure, erroneous and incomplete ascertainment of the factual situation, incorrect application of the substantive law, and requested the Court of Appeal to quash the challenged decision and to return the case for re-consideration by the trial court.

18. On 25 November 2013 the Court of Appeal of Kosovo (Judgment Ac. No. 4820/2012) rejected the applicant's complaint as unfounded and upheld the decision of the trial court (Judgment C. no. 1533/09 of 30 January 2012). The Court of Appeal of Kosovo agreed with and adopted the legal and factual assessment of the case by the trial court by adding, *inter alia*, that the trial court had correctly ascertained the factual situation and correctly applied the substantive law by finding that the applicant's statement of claim was unfounded.

19. On an unspecified date the applicant filed a request for revision with the Supreme Court. The applicant alleged, *inter alia*, essential

violations of the law on contested procedure, erroneous application of the substantive law and proposed that decisions of the trial and appeal courts respectively be remanded for reconsideration.

20. On 8 October 2014 the Supreme Court of Kosovo (Judgment Rev. No. 179/2014) rejected the applicant's request for revision as unfounded. The Supreme Court of Kosovo agreed with and adopted the legal and factual assessment of the case by the trial and appeal courts respectively by adding, *inter alia*, that: (i) the applicant's allegations were unfounded because the disciplinary measure imposed by the employer against the applicant concerning the changing of his job position was of an indefinite duration and not a temporary one and (ii) the applicant never established an employment relationship with his employer for the position (officer of the private sector) where he requested to be reinstated.

Applicant's Allegations

21. The Applicant requests the Court to reinstate him to the workplace "officer of the private sector PUC "Higjieno-Teknika".

22. Furthermore the Applicant alleges that there were flagrant violations of Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo.

Assessment of admissibility

23. 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.

24. 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."*

25. 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 further takes into account Rule 36 2 (b) of the Rules of Procedure which establish:

> *"(2) The Court shall declare 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 rights guaranteed by the Constitution".*

27. In the concrete case the Applicant requests the Court: *"to reinstate him to the position of the officer of private sector in PUC Higjieno-Teknika"*, and that, there have occurred *"flagrant violations of Article 49 [Right to Work and Exercise Profession]"*.

28. The Court considers that the regular courts have sufficiently explained the contractual rights and obligations between the applicant and his employer PUC "Higjieno-Teknika" arising from the employment relationship, the nature of the disciplinary measure imposed on the applicant and duration of the repercussions of such a measure, and that, the applicant did not establish before the regular courts that he had previously held the position of an "officer in the private sector" by failing to provide any evidence to back up that allegation.

29. Moreover, the regular courts have established that the position of an "officer of the private sector" did not even exist within the organizational scheme of his employer PUC "Higjieno-Teknika". The Court, therefore, considers that the applicant, factually and legally, did not have any "legitimate expectations" to be reinstated in a position which he did not hold before, and which, did not even exist within the organizational scheme of his employer.

30. 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).

31. Moreover, the Referral does not indicate that the regular courts of the Republic of Kosovo 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).

32. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 49 [Right to Work and Exercise Profession] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary,* No. 5503/02, ECtHR, Judgment of 26 July 2005).

33. Bearing in mind all of the foregoing, the Court considers that the presented facts do not in any way justify the allegation of a violation of rights guaranteed by the Constitution.

34. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (b) 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 (2) (b) of the Rules of Procedure, on 11 September 2015, 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**
Robert Carolan	Arta Rama-Hajrizi

KI34/15, Applicant Avdullah Kurti - Constitutional review of Decision Ac. no. 1066/13 of the Court of Appeal of Kosovo of 24 November 2014

KI34/15, Resolution on Inadmissibility of 14 October 2015, published on 14 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, enforcement procedure, employment contract, employment relationship, compensation of salaries*

The Court of Appeal of Kosovo rejected as ungrounded the request for execution submitted by the Applicant, with respect to his reinstatement to the working place and compensation of unpaid salaries. The Court of Appeal of Kosovo based its decision on the decision of the Supreme Court which approved the request for revision of the respondent and ordered suspension of the execution procedure. The Applicant filed appeal with the Constitutional Court alleging a violation of his constitutional rights, claiming that the revision cannot stay the execution procedure.

The Constitutional Court noted that the Referral does not raise constitutional questions but rather raises questions of law and of fact which pertain to the duties and prerogative of the regular courts conferred upon them by the law and the Constitution, and added that the question whether the revision filed prohibits the execution procedure is a matter of legality that must be decided by the regular courts. The Referral was declared inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case KI34/15
Applicant
Avdullah Kurti
Constitutional review of Decision Ac. no. 1066/13 of the Court of Appeal of Kosovo of 24 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Avdullah Kurti from village of Vllahi in Mitrovica (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges Decision Ac. no. 1066/13 of the Court of Appeal of Kosovo of 24 November 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision Ac. no. 1066/13 of the Court of Appeals of Kosovo of 24 November 2014.

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).

Proceedings before the Constitutional Court

5. On 16 March 2015, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 21 April 2015, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of judges Robert Carolan (Presiding), Almiro Rodrigues and Bekim Sejdiu.

7. On 22 May 2015, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal of Kosovo.

8. On 14 October 2015, 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. It appears from the documents contained in the referral that the Applicant was an employee of the National Accounting Service - Branch in Mitrovica (hereinafter, the NAS), starting from 1 June 1973 until 31 August 2001, when his employment relationship was terminated. The NAS was dissolved and the Banking and Payments Authority of Kosovo (hereinafter, the BPAK) was established pursuant to UNMIK Regulation 1999/20. The BPAK had terminated the Applicant's work contract because, inter alia, it did not consider itself as successor of the NAS.

10. On an unspecified date, the Applicant filed with the Municipal Court in Mitrovica a statement of claim against the BPAK, requesting reinstatement to work and compensation for unpaid personal income.

11. On 25 June 2001, the Municipal Court (Judgment C. no. 21/2001) approved the applicant's statement of claim against and obliged the respondent to reinstate the applicant to his workplace with all his rights and obligations arising from the work relationship and to compensate him personal income in value of 380 DM starting from 31 August 2000 within a time-line of 15 days. The Municipal Court reasoned, inter alia, that BPAK had continuity and inherited all the rights and obligations of the NAS, that it was indisputable that the applicant was in permanent employment relationship until the moment of establishment of the BPAK, and that, the BPAK had hired

new employees in breach of the applicable Law on Employment Relationship.

12. On 28 September 2001, the BPAK filed with the District Court in Mitrovica an appeal, due to , inter alia, substantial violations of the Law on Contested Procedure (hereinafter: the LCP) provisions, incomplete and erroneous determination of factual situation and erroneous application of substantive law.

13. On 23 March 2002, the Applicant filed with the Municipal Court in Mitrovica a proposal for execution of its judgment (C. no. 21/2001 of 25 June 2001), requesting that the BPAK reinstates him to the workplace with all his rights and obligations arising from the work relationship, to compensate him personal income until final reinstatement to the workplace.

14. On 26 April 2002, the District Court (Judgment Ac. no. 140/2001) rejected the appeal of BPAK as unfounded and upheld the judgment of the Municipal Court. The District Court reasoned, inter alia, that it is indisputable that BPAK administers assets which were previously administered by the NAS, that it is indisputable that BPAK is an independent legal entity dealing with operation of payments and that all these characteristics were also possessed by the NAS, that the BPAK has hired new employees without observing legal procedures, and moreover, the BPAK terminated the applicant's employment relationship without conducting any procedure under the Law on Employment Relationship.

15. On 20 May 2002, the BPAK filed with the Supreme Court a request for revision, alleging, inter alia, substantial violations of LCP provisions and erroneous application of substantive law. The Public Prosecutor of Kosovo also joined the proceedings by filing a request for protection of legality against the judgments in question, due to the essential violation of the contested procedure provisions and the erroneous application of the substantive law.

16. On 7 June 2002, the Municipal Court (Decision E. no. 272/2002) granted leave for execution of its Judgment (C. no. 21/2001 of 25 June 2001) which ordered compensation and reinstatement of the Applicant to the workplace. The Municipal Court also had subsequently rejected as unfounded the objection of the BPAK (Decision E. no. 272/2002 of 12 July 2002).

17. On 26 November 2002, the Supreme Court (Judgment MLC. No. 2/2002) held:

"The request of the Public Prosecutor of Kosovo for the Protection of Legality and the Revision of the Respondent are granted; Judgment Ac. No. 140/2001 of the District Court in Mitrovica, dated 26 April 2002 and Judgment C. no. 21/2001 of the Municipal Court in Mitrovica, dated 25 June 2001 are modified, therefore the Statement of Claim of the Claimant, on obliging the Respondent- Banking and Payments Authority of Kosovo – Mitrovica branch to reinstate the Claimant to his previous position, with all the rights and obligations that derive from the employment relationship and to compensate his personal income in the amount of 380 DM per month starting from 31 August 2000, until the reinstatement of the Claimant to his previous position, is rejected as ungrounded".

18. Moreover the above-stated judgment of the Supreme Court in its relevant part reads:

"The Claimant has indeed had an employment relationship with the former NAS and until 31 August 2000 the Respondent has paid a monthly stipend in amount of 210 DM to him as aid. Pursuant to UNMIK Regulation no 1999/11, dated 15 November 1999, the Banking and Payments Authority of Kosovo (BPAK) is an individual public legal person and pursuant to the provision of Article 3.2 of UNMIK Regulation no. 1999/20, BPK may, on behalf of UNMIK, utilize and administer the property of National Bank of Kosovo, with its headquarters in "Marshall Tito" Str. (now "Nënë Tereza") and the property of the Public Payment Service in Kosovo, with its headquarters in "Lenini" Str. in Prishtina. Pursuant to UNMIK Regulation no. 1999/11 dated 13 October 1999, the exercise of the control of the equipment, premises and payment services is foreseen. Among others, pursuant to the provision of Article 1 of this Regulation, it is foreseen that all pieces of equipment and premises, including the entire movable and immovable property, that are located in Kosovo and have been used by the Public Payment Service in Kosovo, with its headquarters in "Lenini" str. in Prishtina, shall be utilized and administered by UNMIK.

Due to the fact that the Respondent administers the basic assets, which were administered by the former National Accounting Service, no conclusion can be reached as regards the existence of any legal succession between the Respondent and the former NAS, because, pursuant to Article 6 of UNMIK Regulation no. 1999/1, the UNMIK shall administer the movable and immovable property, including finances, bank accounts and the other property of each of its bodies, which is located in the territory of

Kosovo. There is no legal basis wherein it is foreseen that the Respondent has inherited the obligations from NAS. Besides this, the Claimant was notified that the payment in the form of a bonus by the Respondent will be made until 31 August 2000 and had there been a need for employment within the organization, the Claimant had the right to apply for such vacancy. The First Instance Court, just like the Second Instance Court, has erroneously applied the substantive law, when it found that the Statement of Claim of the Claimant is grounded. For this reason, upon granting the request for the protection of legality and the revision, both Judgments were modified and the Statement of Claim of the Claimant was rejected as ungrounded".

19. On 28 January 2003, the Applicant filed with the Supreme Court a proposal for reopening of proceedings. The applicant claimed, inter alia, that he was not given the opportunity to participate in the hearing before the Supreme Court, and that, the impugned judgment of the Supreme Court is entirely unfounded, untenable and illegal.

20. On 19 July 2006, the District Court (Judgment Ac. no. 90/2002) rejected the appeal of the BPAK and upheld Decision of the Municipal Court on execution (E. no. 272/2002 of 7 June 2002). The District Court reasoned that according to Article 384 of the LCP the lodging of revision cannot stay the execution of a final judgment, and that, in the concrete case by virtue of application of the provision in question the final judgment (C. no. 21/2001 of 25 June 2001) cannot be stayed.

21. On 14 February 2007, the Supreme Court (Decision PPC. No. 3/2006) held that the proposal of the applicant to reopen the proceedings is unfounded. The Supreme Court, inter alia, reasoned that in accordance with article 391 of the LCP it decides about the revision only based on the official documents of the case.

22. On 19 February 2013, the Basic Court in Mitrovica (Decision E. no. 577/ 2009) granted leave to the Applicant's execution proposal.

23. On 4 March 2013, the Central Bank of the Republic of Kosovo (hereinafter, the CBK) as successor of the BPAK filed an objection with the Basic Court in Mitrovica against Decision No. 577/09 of 19 February 2013 for allowing execution proposal. The CBK claimed, inter alia, that the impugned decision cannot be executed because there are two decisions of the Supreme Court (Judgment MLC No. 2/2002 of 26 November 2002 and Decision PPC. No. 3/2006 of 14 February 2007) which have nullified decisions of the Municipal and District Court in Mitrovica (Judgments C. no. 21/2001 of 25 June 2001 and Ac. no. 140/2001 of 26 April 2002).

24. On 29 March 2013, the Basic Court in Mitrovica (Decision E. no. 577/2009) approved the objection of CBK. The Basic Court in Mitrovica reasoned, inter alia, that the Supreme Court has accepted the request for protection of legality filed by the Public Prosecutor and the revision of the CBK to change decisions of the Municipal and District courts in Mitrovica, has rejected as unfounded the statement of claim of the applicant to be reinstated to the workplace, and moreover, the Supreme Court subsequently has rejected as unfounded the proposal of the applicant for reopening of the proceedings.

25. On 4 April 2013, the Applicant filed with the Court of Appeal of Kosovo an appeal against the above stated decision of the Basic Court in Mitrovica, complaining, inter alia, that he was unjustly deprived of the right to be reinstated in the workplace, that the Basic Court has violated article 384 of the LCP which provides that revision cannot stay the execution of a final decision.

26. On 24 November 2014, the Court of Appeal of Kosovo (Decision Ac. No. 1066/13) held that *"Decision E. no. 577/09 of the Basic Court in Mitrovica dated 29 March 2013 is MODIFIED, and adjudicated as follows: the enforcement procedure granted by Decision E. no. 577/09 of the Basic Court in Mitrovica dated 19 February 2013 on granting the execution is terminated, and the undertaken execution actions are QUASHED"*. The Court of Appeal reasoned, inter alia, that the judgment (C. no. 21/2001 of 25 June 2001) which granted leave for the execution proceedings was changed by the Supreme Court, the enforcement procedure is terminated and the undertaken execution acts are annulled pursuant to Article 57.3 (Decision on objection) in connection with Article 73 (End of execution) of the Law on Execution Procedure.

Applicant's allegations

27. The Applicant alleges that in his case *"...there have occurred violations of the law and the Constitution from the beginning until the end of the proceedings"*.

28. The applicant asks the Court *"... to take into account Decision Ac. no 90/2002 of the District Court in Mitrovica which says that according to Article 384 of the Law on Contested Procedure the lodged revision cannot suspend the execution of a final judgment"*.

29. The Applicant generally alleges violation of the Constitution; however he does not invoke any constitutional provision in particular.

Assessment of admissibility

30. 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.

31. 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."*

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. The Court further takes into account Rule 36 1 (d) and 2 (d) of the Rules of Procedure which foresee:

> *(1) The Court may consider a referral if:*
>
> *...*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded*
>
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *...*
>
> *(d) the Applicant does not sufficiently substantiate his claim*

34. In the concrete case, the Applicant requests the Court *"to take into account Decision Ac. no 90/2002 of the District Court in Mitrovica which says that according to Article 384 of the Law on Contested Procedure the lodged revision cannot suspend the execution of a final judgment...and that in his case there have occurred violations of the law and of the Constitution from the beginning until the end of proceedings".*

35. The Court considers that the Court of Appeal of Kosovo has given sufficient reasoning by explaining that the Supreme Court upheld the revision lodged by the BPAK and rejected the applicant's statement of claim and that the Supreme Court has subsequently rejected as unfounded the applicant's request to reopen the proceedings.

36. In fact, the Court of Appeal decided that "*the enforcement procedure granted by Decision E. no. 577/09 of the Basic Court in Mitrovica dated 19 February 2013 on granting the execution is terminated, and the undertaken execution actions are QUASHED",* explaining that the execution proceedings were changed by the Supreme Court and the undertaken execution acts were annulled.

37. Furthermore, the questions of whether the lodged revision stays the execution proceedings or whether one institution is successor to the other are questions of legality that must be decided by the regular judiciary.

38. In that respect, the Court considers that the Applicant's referral does not raise constitutional questions but rather it raises questions of law and of fact which pertain to the duties and prerogative of the regular courts conferred upon them by the law and the Constitution.

39. 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 regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

40. In fact, 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).

41. The Constitutional Court recalls that it is not a fact-finding Court and thus 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).

42. The Court reiterates that its task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in

which evidence were taken (See case *Edwards v. United Kingdom,* No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

43. In fact, the Court notes that the Applicant does not indicate how and why the Court of Appeal acted in an arbitrary or unfair manner when concluding that the execution was annulled by the Supreme Court.

44. Moreover, the Constitutional Court cannot substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is up to these courts to assess the evidence presented to them.

45. In these circumstances, the Court considers that the Applicant has not substantiated his allegation of a violation of his fundamental human rights guaranteed by the Constitution because the facts presented by him do not show in any way that the Court of Appeal of Kosovo had denied him the rights guaranteed by the Constitution.

46. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (d) 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 (2) (d) of the Rules of Procedure, on 14 October 2015, 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
Ivan Čukalović

President of the Constitutional Court
Arta Rama-Hajrizi

KI37/15, Applicant Rrahim Zeka - Constitutional Review of Judgment Rev. No. 306/2014 of the Supreme Court of Kosovo, of 16 December 2014

KI37/15, Resolution on Inadmissibility of 14 October 2015, published on 14 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, equality before the law, the right to fair and impartial trial, judicial protection of rights, termination of employment relationship, disability pension*

The Supreme Court rejected the request for revision submitted by the Applicant, with respect to termination of employment relationship and disability pension. The Applicant filed complaint with the Constitutional Court alleging violation of the right to fair and impartial trial.

The Constitutional Court noted that in the present case, the Applicant never complained against the decision of the employer for retirement due to disability and thus has accepted the termination of employment relationship and added that the proceedings before the regular courts were not unfair or arbitrary. The Constitutional Court, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, declared the Referral inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI37/15
Applicant
Rrahim Zeka
Constitutional Review of Judgment Rev. Nr. 306/2014 of the Supreme Court of Kosovo, of 16 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge.

Applicant

1. The Referral was submitted by Mr. Rrahim Zeka, with residence in village Vërnica, Municipality of Vushtrri (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges Judgment Rev. No. 306/2014 of the Supreme Court of Kosovo, of 16 December 2014, which rejected as ungrounded the Applicant's revision related to his request for reinstatement to his previous working place.

3. The challenged Judgment was served on the Applicant on 29 December 2014.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's right to fair and impartial trial as protected by Article 31 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 Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 23 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 21 April 2015, the President of the Court appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Enver Hasani.

8. On 5 May 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 1 July 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur, replacing Judge Arta Rama-Hajrizi, and Judge Altay Suroy as a member of the Review Panel, replacing Judge Almiro Rodrigues.

10. On 14 October 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

11. The Applicant was employed with Kosovo Energy Corporation (hereinafter, the Employer) for an indefinite period of time.

12. On an unspecified date, the Applicant submitted a request to the Pension Fund of Employer to recognize him the right to a monthly payment on behalf of the disability pension.

13. On 29 April 2003, the Employer approved the Applicant's request and decided to send the Applicant on early retirement by an agreement on a monthly payment in the amount of one hundred and five Euros (105

€) on behalf of supplementary pension, starting from 1 April 2004 until 31 March 2009 (hereinafter, Decision of the Employer).

14. After completion of the period of 5 (five) years defined in the aforementioned Decision of the Employer, the Applicant filed a lawsuit with the Municipal Court in Prishtina, requesting his reinstatement to his former working place, or compensation with a monthly payment on behalf of supplementary pension from 1 April 2009 until the fulfillment of the legal requirements for the retirement of the Applicant.

15. On 27 October 2011, the Municipal Court (Judgment C. no. 105/09) rejected as unfounded the Applicant's request.

16. The Municipal Court found that the employment relationship, in terms of a contractual relationship, gives the parties the right to freely determine the rights and duties arising from this relationship. Thus, the employment relationship and the Applicant's right to request monthly payment was terminated after the expiry of the period specified by the Decision of the Employer and fulfillment of the financial obligations of the employer towards the Applicant.

17. On 9 December 2011, the Applicant filed an appeal with the Court of Appeal *"due to essential violations of the procedural provisions, erroneous and incomplete ascertainment of the factual situation, and violation of the substantive law"*.

18. On 3 May 2013, the Court of Appeal (Judgment AC. No. 3146/2012) approved the appeal, by quashing Judgment C. no. 105/09 of the Municipal Court and remanding the case to the Municipal Court for retrial.

19. In its judgment, the Court of Appeal stated that *"the appealed judgment contains substantial violation of the provisions of the contested procedure of which this court takes care ex officio under Article 182 par. 1 and item 2, and the factual situation is erroneously determined, and as a consequence of this, the substantive law was erroneously applied, therefore the appealed judgment had to be necessarily quashed"*.

20. On 23 July 2013, the Basic Court in Prishtina (Judgment C. no. 1183/2013) rejected as ungrounded the Applicant's statement of claim.

21. On 8 October 2013, the Applicant filed an appeal with the Court of Appeal, *"due to: Erroneous ascertainment of the factual situation; Incorrect application of the substantive law"*.

22. On 29 March 2014, the Court of Appeal (Judgment Ac. No. 48/2014) rejected as ungrounded the appeal of the Applicant and upheld the Judgment of Basic Court.

23. The Court of Appeal approved "*the legal conclusion of the first instance court in its entirety as correct and lawful, due to the fact that the challenged Judgment does not contain essential violations of the provisions of the contested procedure (...) and due to the correct and complete investigation of the factual situation*".

24. On 17 June 2014, the Applicant submitted a request for revision to the Supreme Court, *"due to violations of the provisions of the contested procedure and the erroneous application of the substantive law"*.

25. On 16 December 2014, the Supreme Court of Kosovo (Judgment Rev. no. 306/2014) rejected as ungrounded the Applicant's revision.

26. The Supreme Court stated that "*the lower instance courts have acted correctly when they rejected the statement of claim of the claimant*". In addition, the Supreme Court considered that "*the fact that the Claimant never complained against the decision of the Respondent for retirement due to disability, he has accepted the termination of the employment relationship*".

Applicant's allegations

27. The Applicant alleges that the Judgment of the Supreme Court violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 of the European Convention Human Rights.

28. The Applicant requests:

> "To determine the factual situation;
> To correctly review the entire case file in my case;
> *I, hereby, request to annul all actions taken by lower instance courts, and approve my Referral in accordance with the Claim C – 105/09, filed with the Municipal Court, of 05.01.2009."*

Admissibility of the Referral

29. The Court first examines whether the Applicant's Referral has met the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

30. In that respect, the Court refers to Article 48 of the Law, which provides:

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

31. The Court also refers to Rule36 of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
>
> > *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2)The Court shall declare a referral as being manifestly ill-founded when it is satisfied that*
>
> > *[...]*
> >
> > *(d) the Applicant does not sufficiently substantiate his claim."*

32. The Applicant claims that the challenged Judgment violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 of the European Convention on Human Rights.

33. The Applicant alleges that his rights were violated because of erroneous determination of facts and erroneous application of the law by the regular courts. However, he did not indicate how and why these legal errors have violated his constitutional rights.

34. In fact, 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,* No. 53363/99 ECHR, Decision, of 31 May 2005).

35. In fact, the Court considers that the Supreme Court thoroughly reasoned why the Applicant's statement of claim was rejected. In addition, the Supreme Court found that the Employer has fulfilled its obligation to the Applicant, in accordance with the Decision of Employer, which was delivered upon request of the Applicant and was not challenged by him

36. Moreover, the Court recalls that the Supreme Court concluded that the Applicant never complained against the decision of the Employer for retirement due to disability and thus *"he has accepted the termination*

of the employment relations". The Applicant has not explained how and why that conclusion of the Supreme Court violates his rights to equality before the law, to fair and impartial trial or to judicial protection of rights.

37. The Court further considers that the proceedings in the regular courts have not been unfair or arbitrary (See case *Shub against Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

38. In this regard, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).

39. Therefore, the Court does not act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, see also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).

40. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated and proved his allegation.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (1) d) and (2) d) of the Rules of Procedure, in the session held on 14 October 2015, unanimously

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI69/15, Applicant Enver Krasniqi - Constitutional review of Decision Rev. No. 305/2014 of the Supreme Court of Kosovo of 8 December 2014

KI69/15, Resolution on Inadmissibility of 14 October 2015, published on 21 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, compensation of damage, the right to fair and impartial trial, right to work and exercise profession, termination of employment relationship, probation period*

The Supreme Court concluded that the Applicant's request for reinstatement to his workplace and compensation of damage was filed out of legal time limit. The Applicant appealed to the Constitutional Court alleging violation of the right to work and exercise of profession, and the right to fair and impartial trial.

The Constitutional Court noted that in the present case, the Applicant has failed to prove that his employment contract was terminated in unlawful manner, and that the Applicant's allegations on erroneous application of procedural law are in contradiction with the documents which the Applicant submitted to the Court. The Constitutional Court added that the Applicant is not, mainly, satisfied with the legal qualification of the facts by the regular courts. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI69/15
Applicant
Enver Krasniqi
Constitutional review of Decision Rev. No. 305/2014 of the Supreme Court of Kosovo of 8 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Enver Krasniqi from Peja (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision Rev. No. 305/2014 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 8 December 2014, which was served on the Applicant on 18 February 2015.

Subject Matter

3. The subject matter is the constitutional review of Decision (Rev. No. 305/2014) of the Supreme Court, which according to the Applicant's allegations violated the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and by Article 49 [Right to Work and Exercise Profession].

Legal Basis

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

(hereinafter, the Law) and Rule 56 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 29 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 June 2015, the President of the Court, by Decision No. GJR. KI69/15 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI69/15 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 22 July 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 13 August 2015 the Court requested from the Basic Court in Prishtina to submit the copy of the receipt, indicating the date when the Decision (Rev. no. 330/2014) of the Supreme Court, of 8 December 2014 was served on the Applicant.

9. On 28 August 2015 the Basic Court in Prishtina submitted the additional document requested by the Court.

10. On 14 October 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. On 26 April 2005 the Ministry of Public Services by Decision (06/2005) appointed the Applicant as Acting Permanent Secretary.

12. On 5 May 2006, the Secretariat of the Senior Public Appointment Committee (hereinafter: SPAC) informed the Applicant that he was elected to the position of Permanent Secretary of the Ministry of Public Services.

13. On 3 July 2006, the Applicant concluded the employment contract (No. 020), to the position of the Permanent Secretary at the Ministry of Public Services, the contract provided that: *the contract becomes valid after the expiration of three month of the probation period".*

14. On 4 August 2006, SPAC by Decision (No. 032/2006) appointed the Applicant to the position of Permanent Secretary at the Ministry of Public Services.

15. On 10 August 2006, the Minister of Public Services and his advisors held a meeting with the Applicant where they pointed out the irregularities in the Applicant's work. Meanwhile at that meeting the Applicant was informed that the Minister will recommend to the SPAC the termination of the employment relationship with the Applicant.

16. On 17 August 2006, the Ministry of Public Services by the recommendation (No. 3111) requested from the SPAC to render a decision on termination of the employment relationship to the Applicant.

17. On 21 August 2006, SPAC by Decision (No. 042/2006) terminated the employment relationship of the Applicant to the position of Permanent Secretary. In paragraph two of this decision is stated that "*the contract concluded between SPAC and the Applicant is terminated during the probation period mentioned in the contract*".

18. On 25 August 2006, the Applicant filed an appeal with SPAC against the Decision (No. 042/2006 of 21 August 2006).

19. On 3 February 2009 the Applicant addressed SPAC by a letter and requested clarification as to why he has not received any answer to his appeal for a period of 2 (two) years.

20. On 17 March 2009, the Applicant filed a lawsuit for compensation of damage and reinstatement to the working place with the Municipal Court in Prishtina.

21. On 25 May 2012, the Municipal Court in Prishtina by Judgment (C No. 565/09) rejected as ungrounded the Applicant's statement of claim with following reasoning:

> *"... Based on the evidence presented, the Respondent has confirmed the legal basis of termination of employment contract before the expiry of the time limit provided under the contract and based on this, the Court assesses that Decision No. 042/06 of the SPAC, of 21 August 2006, as a body of the Respondent, can be considered as lawful..."*

22. On 7 January 2013 the Applicant filed an appeal with the Court of Appeal of Kosovo against the Judgment (C No. 565/09) of the Municipal Court.

23. On 18 April 2014 the Court of Appeal, by Judgment (Ac. No. 796/2013) rejected the Applicant's appeal as ungrounded and upheld Judgment (C no. 565/09) of the Municipal Court with following reasoning:

> *"... it is the assessment of the Court of Appeals as well that, in the concrete situation, the Employer evaluates the work and performance of the employee, and no legal provisions provides that such a matter shall be carried out by the Court. Since the evaluation of the Minister resulted in failure of the Claimant to properly perform his tasks, then the termination of this employment relationship, without waiting the end of the probation period, was fair..."*

24. On 24 June 2014, the Applicant filed a request for revision with the Supreme Court against Judgment (Ac. No. 796/2013), of the Court of Appeal.

25. On 8 December 2015 the Supreme Court by Decision (Rev. No. 305/2014) approved the request for revision as partly grounded, modified Judgment (Ac. No. 796/2013) of the Court of Appeal, and rejected the Applicant's statement of claim as out of time "*for compensation of damage and reinstatement to the working place*."

26. In its Decision, the Supreme Court held that the Judgment (Ac. No. 796/2013) of the Court of Appeal and Judgment (C No. 565/09) of the Municipal Court were rendered by erroneous application of the substantive law when assessing the Applicant's claim with respect to the deadline of submission of the claim.

27. Moreover, the Supreme Court concluded that the Applicant's claim "*for compensation of damage and reinstatement to the working place*" was not submitted within the prescribed legal time limit.

Applicant's Allegations

28. The Applicant requests the Court to annul the Decision (Rev. No. 305/2014) of the Supreme Court, which violated the right under Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession].

29. The Applicant claims that the Supreme Court erroneously concluded that "*in the present case we are dealing with a labor dispute arising from employment relationship*" and that "*the legal basis of the claim was compensation for the damage caused due to unlawful acts of officials of state authorities or bodies thereof and, as a result, upon deciding, the provisions of the LOR, regulating this area, should have been applied*".

Admissibility of the Referral

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

31. In that regard, the Court refers to Article 48 of the Law and Rule 36 of the Rules of Procedure.

32. 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. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2)The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *(d) the Applicant does not sufficiently substantiate his claim".*

34. The Applicant alleges that the Supreme Court had erroneously applied the procedural law and that the challenged decision was taken on basis of law on labor, whereas his statement of claim was related to the compensation of damages and it should have been applied the Law on Obligations.

35. In fact, the Applicant argues that such application of the procedural and substantive law have violated the right to fair and impartial trial and the right to work and exercise the profession, as guaranteed by the Constitution.

36. In this regard, the Court notes that these allegations of the Applicant are in contradiction with the documents which the Applicant submitted to the court.

37. From the submitted documentation can be concluded that the Applicant's employment relationship has been terminated by the Decision (No.042/2006) of SPAC *"within the probationary period specified in the contract"*.

38. Moreover, the Court notes that the Supreme Court by Decision (Rev. No. 305/2014) rejected the Applicant's claim as ungrounded and explained in which manner the Applicant should have sought the protection of his right from employment relationship through the judicial way:

> *"... the Law on Basic Rights from Employment Relationship... it is provided that an unsatisfied employee ... if the competent authority does not render a decision within 30 days from the date of filing the request, i.e. objection, he has the right to seek protection of his rights before the competent court within a time limit of 15 days".*

39. The Supreme Court further concluded: *"... that in the present case, the procedural presumptions... due to the fact that the Claimant has not addressed to the Court a request for protection of violated rights, within the legal time limit provided by the provision of Article 83 of the Law on Basic Rights deriving from Employment Relationship. This is based on the fact that the Claimant has filed against Decision No. 1712 on termination of employment relationship, dated 22 August 2006, an appeal with the Senior Public Appointments Committee on 25 August 2006, while the claim for protection of violated rights was filed with the Court on 19 March 2009 (2 years and 7 months after filing the appeal). This is a preclusive time limit, meaning that if it is missed, the right to employment relationship is lost".*

40. From the foregoing, the Court concludes that the Applicant's request for compensation of the damage is based on the applicant rights arising from the employment contract.

41. Considering that the Applicant has failed to prove that his employment contract was terminated in unlawful manner, the

applicant's allegations on erroneous application of procedural law and "*unlawful activities of officials of state authorities*" are in contradiction with the documents which the Applicant submitted to the court.

42. The Court notes that the Applicant is not, mainly, satisfied with the legal qualification of the facts and the law applied by the regular courts. Legal qualification of the facts and applicable law are matters which fall under the domain of legality.

43. The Court considers that the proceedings before the Municipal Court, the Court of Appeal and the Supreme Court, have been fair in their entirety and the decisions are thoroughly justified and reasoned, regardless of the different application of procedural and substantive law.

44. Therefore, the Constitutional Court concludes that the proceedings in general and viewed in its entirety have been conducted in such way that the Applicant had a fair trial (see, inter alia, *Edwards v. United Kingdom,* No.13071/97, report on European Commission of Human Rights of 10 July 1991; and, *mutatis mutandis,Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).

45. In fact the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution. (see *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred Articles of the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

46. Moreover, the Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts or other public authorities, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law. (see, *mutatis mutandis, Garciz Ruiz v. Spain,* No. 30544/96, ECtHR, Judgment of 21 January 1999, para.28. see also Constitutional Court case No. Ki70/11, *Applicants Faik Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

47. Therefore, the Court concludes that the Applicant did not substantiate and prove the allegation of violation of the right to fair and impartial trial and the right to work and exercise profession.

48. In sum, the Court considers that, in accordance with Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, the Applicant's

allegations are manifestly ill founded and therefore the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law, and Rules 36 (2) (d) of the Rules of Procedure, in the session held on 14 October 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Arta Rama-Hajrizi

KI78/15, Applicant Fatime Tosuni - Constitutional review of Judgment Rev. no. 318/2014 of the Supreme Court of Kosovo, of 19 January 2015

KI78/15, Resolution on Inadmissibility of 14 October 2015, published on 21 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to work and exercise profession, termination of employment relationship, civil service*

The Supreme Court rejected as ungrounded the request for revision filed by the Applicant regarding the termination of employment relationship. The Applicant filed complaint with the Constitutional Court alleging violation of the right to work and exercise profession.

The Constitutional Court noted that in the present case, the Applicant's allegations that the challenged Judgment violated her right to work and exercise a profession, guaranteed by Article 49 of the Constitution, is only an expression of her subjective assessment of an erroneous determination of the factual situation and erroneous application of the substantive law, but not the real evidence of the committed violation of the rights under Article 49 of the Constitution. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded in accordance with Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI78/15
Applicant
Fatime Tosuni
Constitutional review of Judgment Rev. no. 318/2014 of the Supreme Court of Kosovo of 19 January 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Ms. Fatime Tosuni (hereinafter: the Applicant), from Gjilan.

Challenged decision

2. The Applicant challenges Judgment [Rev. no. 318/2014] of the Supreme Court of Kosovo, of 19 January 2015, which was served on her on 8 May 2015.

Subject matter

3. Subject matter of the Referral KI78/15 is constitutional review of Judgment which, allegedly, has violated the rights and freedoms guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of

the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 16 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 August 2015, by Decision no. GJR. KI78/15, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision no. KSH. KI78/15, the President of the Court appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

7. On 19 August 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. On 14 October 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

9. In the period between 4 May 2006 and 30 April 2007, the Applicant established an employment relationship with the Ministry of Internal Affairs (hereinafter: MIA) in the position of the Coordinator of the Municipal Center for Civil Registration (hereinafter: CMCCR). Based on the employment contract no. 02/111/38, the employment relationship was for a definite period of time.

10. During 2006, the Ministry of Internal Affairs issued a new regulation on the change of the internal organizational structure, also covering the job position of the Applicant. According to the new organizational structure, it is foreseen that the incumbent of the position of CMCCR must have a university degree and relevant professional qualifications.

11. On 30 March 2007, the MIA, pursuant to Article 35.1 (b) of UNMIK Regulation 2003/2 On the Civil Service, rendered a Decision [prot. no. 290/01] on termination of the Applicant's employment relationship.

12. In 2007, MIA announced a job vacancy to fill the job position of CMCCR. Following the completion of the selection process, MIA selected a candidate who fulfilled all necessary qualifications provided in the vacancy announcement. The Applicant had not applied for the position.

13. On 17 May 2007, the Applicant addressed MIA in writing, requesting an explanation why her definite-term contract was not extended. There is no evidence in the case file to indicate whether or not MIA responded to the letter of the Applicant).

14. On 6 July 2007, the Applicant filed a complaint with the Independent Oversight Board (hereinafter: IOB), requesting that the decision of MIA [prot. no. 290/01], of 30 March 2007, be annulled.

15. On 5 March 2008, the IOB rendered Decision [no.245.08] which rejected the Applicant's appeal as ungrounded. The IOB reasoned that, "*by Article 35.1 (b) of the AD 2003/2, it was explicitly foreseen as follows: "the employment in the Civil Service shall automatically end on the expiry of the employment contract of the civil servant[...]. It follows that the Employing Authority in the CSK [Civil Service of Kosovo] shall decide for the extension of the employment contract, as it has decided in the present case. The Employing Authority has fulfilled all the bilateral rights to the appellant, which derive from the time limit of the employment contract [...].In this case, the appellant lacks the adequate qualification for this job position...*"

16. On an unspecified date, the Applicant filed a lawsuit with the Municipal Court in Prishtina against the Government of Kosovo and MIA, requesting the annulment of the Decision [prot.no. 290/01] of 30 March 2007, on termination of her employment relationship, as well as her reinstatement to the working place with all privileges.

17. On 14 March 2012, the Municipal Court in Prishtina rendered Judgment [C1. no. 146/08], which rejected the Applicant's statement of claim as ungrounded, with the reasoning that, "*Following the assessment and analysis of all the evidence, the Court assessed as grounded the respondent's objection when challenging the statement of claim regarding the termination of the employment relationship by referring to the provision of Article 35.1 (b) of the AD no. 2003/2, as grounded, so that the respondent, after the expiry of the contract with the claimant announced the public job vacancy for the challenged job position, while the claimant did not apply. The court found that the respondent has fulfilled its obligations to the claimant at the day when the employment relationship was terminated.*"

18. Within the legal deadline, the Applicant filed an appeal with the Court of Appeal against Judgment [C1. no. 146/08] of the Municipal Court, of 14 March 2012, due to erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.

19. On 15 April 2014, the Court of Appeal rendered Judgment [Ac. no. 4560/2012], by which it rejected the Applicant's appeal as ungrounded with the reasoning that, "*the challenged judgment does not contain essential violations of the provisions of the LCP, under Article 182, paragraphs 1 and 2, of which this Court takes care ex officio, and at the same time is based of the factual situation, determined completely and correctly, and the substantive law was also correctly applied.*"

20. On 12 August 2014, the Applicant submitted to the Supreme Court a request for revision against Judgment [Ac. no. 4560/2012] of the Court of Appeal, of 15 April 2014.

21. On 19 January 2015, the Supreme Court rendered Judgment [Rev. no. 318/2014] which rejected the Applicant's request for revision as ungrounded with the reasoning that, "*The Supreme Court of Kosovo assessed that the lower instance courts have correctly and completely determined the factual situation and correctly applied the substantive law when they found that the claimant's statement of claim is ungrounded* ".

Applicant's allegations

22. The Applicant alleges that Article49 of the Constitution of Kosovo guarantees the right to work. The right to work as a fundamental human right, which, together with other rights, forms the basis for the legal order of the Republic of Kosovo.

23. The Applicant addresses the Court with the request: *"I expect that the Constitutional Court will render a decision on the admissibility of my appeal so that I may exercise my fundamental right – right to work, guaranteed by the Constitution of the Republic of Kosovo and other international instruments".*

Admissibility of the Referral

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

25. 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."*

26. Article 48 of the Law also states:

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

27. In this case, the Court refers to Rule36 (1) (d) and (2) (b) of the Rules of Procedure, which provides:

(1) "Court may consider a referral if:

[...]

d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare 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".

28. The Court notes that the Applicant has built her constitutional complaint on an allegation of a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution which states:

Article 49 [Right to Work and Exercise Profession]

1. The right to work is guaranteed.

2. Every person is free to choose his/her profession and occupation.

29. The Court notes that the right to work and exercise profession under Article 49 of the Constitution is subject to protection in the constitutional system of Kosovo, where these rights are further exercised in a manner and under conditions provided by law, and this means the right of an individual that his employment relationship is not terminated contrary to what is determined by law.

30. Having reviewed the case files, the Court notes that the administrative courts, in three instances, in accordance with the law, have examined the merits of the Applicant's allegations and determined the factual

situation of importance for rendering of decisions, including also Decision [Rev. no. 318/2014] of the Supreme Court, which is alleged by the Applicant.

31. Furthermore, the Court finds that the decision of the Supreme Court contested by the Applicant does not in any way prevent the Applicant from working or exercising a profession. With its decision [Rev.no. 318/2014], the Supreme Court merely confirmed that the Applicant's specific employment dating from 4 May 2006 until 30 April 2007 had come to an end. This does not in any way prevent or prohibit the Applicant from taking up any other employment which she may choose. As such, there is nothing in the Applicant's claims that justifies a conclusion that her Constitutional right to work has been infringed (see, mutatis mutandis, Resolution on Inadmissibility no. RK734/14, in case KI09/14, of 24 November 2014, paragraph 29).

32. Furthermore, the Court notes that the regular courts based their decisions on Article 35.1. (b) of the Administrative Direction no. 2003/2 on Implementing UNMIK Regulation no. 2001/36 on the Civil Service, which states:

Section 35. Termination of Employment

35.1 Employment in the Civil Service terminates automatically:

[...]

(b) On the expiry of the civil servant's contract of employment.

33. Therefore, in the Court's opinion, the Applicant's allegations that the challenged Judgment violated her right to work and exercise a profession, guaranteed by Article 49 of the Constitution, is only an expression of her subjective assessment of an erroneous determination of the factual situation and erroneous application of the substantive law, but not the real evidence of the committed violation of the rights under Article 49 of the Constitution.

34. The Court reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings, cannot of itself raise an arguable claim for breach of Article 49 of the Constitution (see: case *Mezotur-Tiszazugi Tarsulat vs. Hungary,*, No.5503/02, ECHR, *Judgment of 26 July 2005*).

35. 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. The role of the regular courts is

to interpret and apply the pertinent rules of both procedural and substantive law. (See case: *Garcia Ruiz vs. Spain,* no. 30544/96, ECHR, Judgment of 21 January 1999; see also case: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility, of 16 December 2011).

36. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant did not substantiate that the challenged decision violates her rights guaranteed by the Constitution and the ECHR.

37. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and 2 (b) of the Rules of Procedure, on 14 October 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Arta Rama-Hajrizi

KI99/15, Applicant Axhi Thaçi - Constitutional Review of Judgment (SCEL-09-0009) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, of 12 November 2013

KI99/15, Resolution on Inadmissibility of 14 October 2015, published on 21 December 2015

Keywords: *Individual referral, out of time referral, equality before the law, the process of privatization*

The Special Chamber of the Supreme Court rejected as inadmissible the Applicant's appeal regarding his inclusion in the final list of employees entitled to realization of a share of the proceeds from the privatization of a socially owned enterprise. The Applicant filed complaint with the Constitutional Court alleging violation of the principle of equality before the law.

The Constitutional Court noted that in the present case, the Applicant submitted his referral after the expiry of the deadline of 4 (four) months provided by the law. The Constitutional Court declared the Referral inadmissible because it was out of time in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case Nr. KI99/15
Applicant
Axhi Thaçi
Constitutional Review of Judgment (SCEL-09-0009) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, of 12 November 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Axhi Thaçi from Prizren (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Judgment (SCEL- 09-0009 of 12 November 2013) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: Specialized Panel of the SCSC), which was served on the Applicant on 13 November 2013.

Subject Matter

3. The subject matter is the request for the constitutional review of the abovementioned Judgment of the Specialized Panel of the SCSC. The Applicant considers that the judgment was rendered *"by not respecting the equality of parties – employees during the preparation of the list for exercising the right to 20%," whereby* Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) was 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 23 July 2015, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 19 August 2015, by Decision GJR. KI99/15 the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, by Decision KSH. KI99/15 the President appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.

7. On 14 September 2015 the Court informed the Applicant and the Specialized Panel of the SCSC about the registration of the Referral.

8. On 14 October 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

9. On 31 August 2006 the SOE "Hotel Theranda" from Prizren was privatized.

10. The final list of employees eligible to 20% share from privatization of the SOE "Hotel Theranda" from Prizren was published in the daily newspapers on 21, 22, 23 and 24 May 2009.

11. In accordance with Article 67.6 of the Administrative Instruction 2008/06 in conjunction with Article 10.6 (a) of UNMIK Regulation No. 2003/13, the complaint against the final list must be filed within 20 (twenty) days after the publication of the final list.

12. The deadline for filing appeals before the Specialized Panel of the SCSC against the final list of employees of the SOE "Hotel Theranda" was 13 June 2009.

13. On 22 June 2009 the Applicant (Appellant C-0022) filed an appeal with the Specialized Panel of the SCSC, by which he requested to be included in the final list of employees of the SOE "Hotel Theranda".

14. On 12 November 2013 the Specialized Panel of the SCSC by Judgment (SCEL- 09-0009) rejected the Applicant's appeal (Appellant C-0022) as *"... inadmissible as it was filed after the deadline...*" with the following legal remedy:

> *"An appeal may be filed against this Judgment within 21 days with the Appellate Panel of the Special Chamber. [...] The provided deadline starts at midnight of the day when the Judgment was served on the Appellant in writing".*

Applicant's Allegations

15. The Applicant alleges that the Specialized Panel of the SCSC rendered the challenged judgment "*by not respecting the equality of parties – the employees when compiling the list for exercising the right to 20% share,"* whereby Article 24 [Equality Before the Law] of the Constitution was violated as it follows:

> *"... I was denied the right to 20% share as an employee of SOE "Hotel Theranda" from Prizren, after its privatization ... completely without any basis, and on the first page of the list of the Judgment in question, were included persons and have exercised this right, who have not been active at all in this enterprise ... whereas I was removed from the list of 20%, even though I have been active and involved in this issue...".*

16. The Applicant alleges that *"... I was ill and cured the psychiatric diagnosis from 08 April 2009 until 15 September 2009, which was the time limit for filing an appeal; I could not act due to health issues[...] and it is not true that I have been served with the Judgment – my signature is not in the delivery note".*

17. The Applicant requests the Constitutional Court *"to enable me ... to be included in the list of exercising the right to 20% share, to which I am entitled after the privatization of the enterprise – SOE "Hotel Theranda".*

Admissibility of the Referral

18. The Court shall examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedures.

19. 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".*

20. In addition, the Court refers to Article 49 of the Law, which provides that:

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

21. The Court further refers to Rule 36 (1) (c) of the Rules of Procedure, which foresees that:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(c) 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. The Court notes that the Judgment (SCEL-09-0009 of 12 November 2013) of the Specialized Panel of the SCSC, was served on the Applicant on 13 November 2013; the Applicant submitted his Referral to the Court on 23 July 2015; the Referral was filed with the Court after the expiry of 4 months from the date the Judgment of the Specialized Panel of the SCSC was served on the Applicant.

23. In this regard, the Court reiterates that the four months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is of preclusive nature and is established 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 constitutional review (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

24. It follows that the Referral was filed out the deadline provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 paragraph 7 of the Constitution, Articles 20 and 49 of the Law, and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 14 October 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Altay Suroy

President of the Constitutional Court
Arta Rama-Hajrizi

KI131/14, Applicant Agron Alaj - Constitutional review of Judgment Pml. no. 115/2014, of the Supreme Court, of 16 June 2014

KI131/14, Resolution on Inadmissibility of 10 November 2015, published on 22 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, co-perpetration of criminal offence, the right to liberty and security, measure of detention on remand, release on bail*

The Supreme Court rejected as ungrounded the request for protection of legality filed by the Applicant against the decision of the lower instance courts on extension of detention on remand. The Applicant was suspected of co-perpetration of the criminal offences of facilitating prostitution and money laundering. The Applicant filed complaint with the Constitutional Court for violation of the right to liberty and security, alleging that the requirements for extension of his detention on remand did not exist.

The Constitutional Court noted that the regular courts reasoned their decisions and responded to the allegations filed by the Applicant, and added that the proceedings before regular courts were not unfair or arbitrary. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI131/14
Applicant
Agron Alaj
Constitutional review of Judgment Pml. no. 115/2014, of the Supreme Court, of 16 June 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Agron Alaj from village Drenoc, Municipality of Deçan (hereinafter: the Applicant), represented by Mr. Rifat Abdullahi.

Challenged decision

2. The challenged decision is Judgment Pml. no. 115/2014, of the Supreme Court, of 16 June 2014.

3. The Applicant did not mention when he was served with the challenged Judgment.

Subject matter

4. Subject matter is the request for constitutional review of the abovementioned Judgment of the Supreme Court. The Applicant considers that the regular courts in their decisions on imposing the detention on remand, have violated Article 29 of the Constitution of the Republic of Kosovo [Right to Liberty and Security] and Article 5 (Right to liberty and security), of the European Convention on Human Rights and Freedoms.

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

Proceedings before the Constitutional Court

6. On 22 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 September 2014, the President of the Court by Decision GJR. KI131/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Decision KSH. KI131/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 9 September 2014, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.

9. On 23 September 2014, the Applicant submitted an additional document to the Court.

10. On 12 May 2015, the Applicant submitted an additional document, request to expedite the procedure.

11. On 10 November 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible.

Summary of the facts

12. On 6 February 2013, the Basic Court in Ferizaj, Department for Serious Crimes, acting upon the request of the Basic Prosecution Office of EULEX, imposed the measure of detention on remand in duration of 1 (one) month, under the grounded suspicion that the Applicant, in co-perpetration, has committed the criminal offence of organized crime, facilitating prostitution and the criminal offense of money laundering.

13. On 23 May 2013, the Basic Court in Ferizaj, (Decision PPR. no. 2/13, GJPP. no. 180/12), approved the proposal of the Prosecutor and of the

Applicant on termination of detention on remand. The court reasoned that the requirements for release of the defendant from the detention on remand on bail have been met.

14. On 11 December2013, the Basic Court in Ferizaj, upon the request of the Prosecution Office imposed the measure of detention on remand against the Applicant in duration of 1 (one) month. The Prosecutor reasoned his request for extension of detention on remand, with reference to new evidence obtained in the investigation procedure.

15. The Basic Court in Ferizaj, deciding upon the imposition of the measure of detention on remand, assessed that there is a concrete danger that if the Applicant is free he may flee, obstruct the progress of the criminal proceedings, and influence the witnesses and accomplices. The Court also concluded that if the Applicant would be at liberty, there is a danger of repeating the criminal offence.

16. On 4 April 2014, the Basic Court in Ferizaj, deciding upon the request of the Prosecution Office, decided to extend to the Applicant the detention on remand for more 3 (three) months.

17. The Applicant filed appeal with the Court of Appeal against the Decision of the Basic Court in Ferizaj. In his appeal, the Applicant alleged among the other violation of the criminal proceedings and of his right to liberty and security guaranteed by the Constitution, and he also alleged that the requirements for extension of his detention on remand did not exist anymore.

18. On 11 April 2014, the Court of Appeal of Kosovo (Decision Pn1. no. 700/2014) rejected the appeal of the Applicant as ungrounded.

19. The Court of Appeal noted that the first instance court acted correctly when it extended the detention on remand to the Applicant, because the Applicant through his lawyer *"until now interfered in the flow of the current criminal case, and, based on the telephone wiretapping, he has allegedly been able to influence other suspects, and if the defendant finds himself at liberty he will not hesitate to obstruct the flow of the criminal proceedings, by continuing to exercise his influence on the possible witnesses of this case [...]"*.

20. Finally, the Court concluded by stating that the more lenient measures would be insufficient to ensure the presence of the Applicant in the proceedings and successful conduct of the criminal proceedings.

21. Against Decision (PPR. No.2/13, GJPP. No.180/12), of4April2014, of the Basic Court in Ferizaj and Decision of the Court of Appeal (Pn1.

No.700/2014,of 11April2014), the Applicant filed a request for protection of legality with the Supreme Court.

22. In his request for protection of legality, the Applicant alleges essential violation of criminal procedure and erroneous and in completed terminate on of factual situation. The Applicant claim saga in that there is no legal as is for the extension of his detention on remand and that the challenged decisions do not mention any specific cumstance or do not provide concrete evidence to prove the risk of flight, influence on witnesses and the risk of repeating the offense.

23. On 16 June 2014, the Supreme Court of Kosovo (Judgment Pml. no. 115/2014) rejected as ungrounded the request for protection of legality, filed by the Applicant.

24. Regarding the Applicant's allegation of violation of criminal procedure, the Supreme Court notes that the Applicant's allegations are ungrounded, because the challenged decisions are clear, comprehensible and based on law.

25. As to the Applicant's allegations of erroneous and incomplete determination of factual situation, the Court finds that *"[...] it is expected to be examined and clarified in the next stages of the criminal proceedings and not in this phase since the defendant by these decisions was neither found guilty nor adjudicated, but the measure of detention on remand is imposed on him only based on determination of the grounded suspicion"*.

26. Finally, regarding the challenged decisions on extension of detention on remand, the Supreme Court found that the first instance and second instance courts gave sufficient reasons to extend the detention on remand in accordance with applicable law and "*[...] considering the gravity of this criminal offence, the way this criminal offence was committed, his personal characteristics, and the fact that now the criminal proceedings is initiated against him for a serious criminal offense, there is a risk that if the defendant finds himself at liberty, in order to avoid the criminal liability, he may hide, may influence other witnesses who have not been heard yet, as well as other co-defendants involved in this criminal matter and, hence, the normal conduct of the criminal proceedings would be obstructed"*.

27. For a purpose of a full presentation of facts, the Court notes thaton17 June 2014, the Basic Prosecutor's Office of EULEX in Ferizaj filed an indictment against the Applicant on suspicion of having committed the criminal offense of organized crime and in co-perpetration, committed the criminal offense of facilitating prostitution.

Applicant's allegations

28. The Applicant alleges that during the arrest and imposition of the measure of detention on remand was violated Article 29 of the Constitution [Right to Liberty and Security] and Article 5 (Right to liberty and security) of the European Convention on Human Rights and Freedoms.

29. The Applicant further claims that the decisions of the regular courts are unlawful because, according to him, the requirements for imposition and extension of detention on remand did not exist.

30. The Applicant requests the Court as it follows:

    "I. To declare the Referral admissible;

    II. To hold that there has been violation of Article 29 (Right to Liberty and Security) of the Constitution of the Republic of Kosovo and Article 5 of ECHR;

    III. To annul Judgment and Decisions of regular courts mentioned above;

    IV. To release the defendant Agron Alaj from detention on remand;

    V. To uphold Decision of the Basic Court in Ferizaj PPR. no. 2/13 (GJPP. no. 180/12), of 23.05.2013 on termination of detention on remand on bail".

Admissibility of the Referral

31. The Court shall examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

32. 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."

33. In addition, the Court recalls Rules 36 (1) (d) and36 (2) (b) and (d) of the Rules of Procedure, which states:

(1) "The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare 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.

[...]

(d) the Applicant does not sufficiently substantiate his claim;".

34. As mentioned above, the Applicant alleges that during the arrest and imposition of detention of remand was violated his right to liberty and security guaranteed by Article29 of the ConstitutionandArticle5of the ECHR. The Applicant further alleges that all decisions of the regular court sareun law ful because, according to him, there were no requirements for the imposition and extension of detention on remand.

35. The Court refers to Article 29 of the Constitution, which among the other states that a person shall be deprived of liberty 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 this case, the Court states that when regular courts decide on the extension of detention on remand must show *"that there are* relevant and sufficient grounds for extension of detention on remand*"* (See, inter alia, Piruzyan case against Armenia, ECHR, No.33376/07, Judgment of 26June2012, para.91).

37. In the present case, as regards the proceedings before the regular courts, the Court refers to decisions rendered by the Basic Court in Ferizaj, including there cent decision of the Basic Court,of4 April 2014on extension of the detention on remand. In its decision on extension of the detention on remand, the Basic Court found that there are legal grounds for extension of the detention on remand because there is a danger of flight, that the Applicant may influence the

witnesses and there is a risk of repetition of the criminal offence. This reasoning is upheld by the Court of Appeal and finally by the Supreme Court.

38. The Court further notes that the Supreme Court of Kosovo in its Judgment (Pml. no. 115/2014, of 16 June 2014), rejected the request for protection of legality as ungrounded, by holding that the first instance court provided sufficient reasons on decisive facts regarding the legal basis for the extension of detention on remand, and correctly acted when it extended the detention on remand to the Applicant

39. Although the Applicant alleges that his rights were violated by erroneous determination of facts and erroneous application of the law by regular courts, he did not show how these decisions have violated his constitutional rights to liberty and security. Moreover, the Court notes that the regular courts responded to the allegations filed by the Applicant in his appeal, namely in his request for protection of legality.

40. Furthermore, having considered the Applicant's allegations regarding erroneous application of the procedural and substantive law by regular courts, the 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. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain,* ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility of 16 December 2011).

41. As mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court of Kosovo and in the Judgments of the Court of Appeal and of the Basic Court in Ferizaj, are complete and clear, therefore, the Court found that proceedings before the regular courts were not unfair or arbitrary (See case *Shub v. Lithuania,* no. 17064/06, ECHR Decision of 30 June 2009).

42. In fact, with regard to the Applicant's request for his release of detention on remand, this Court cannot consider it to fall within its competence to provide the Applicant this protection (See case KI20/13, Applicant *Rifat Osmani,* Resolution on Inadmissibility).

43. For the foregoing reasons, the Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of the right to fair and impartial trial and that the Applicant did not sufficiently substantiate his claim

FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 and Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure on 10 November 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur
Ivan Čukalović

President of the Constitutional Court
Arta Rama-Hajrizi

KI173/14, Applicant Staja Savić - Constitutional review of Decision KPCC/D/C/264/2014 of the Kosovo Property Claims Commission, of 21 October 2014

KI173/14, Resolution on Inadmissibility of 10 November 2015, published on 22 December 2015

Keywords: *Individual referral, non-exhaustion of remedies, the mortgaged property, usurpation of property, protection of property, the principle of subsidiarity*

Kosovo Property Claims Commission rejected the appeal of the Applicant for confirmation of ownership over the immovable property challenged by a third party. Kosovo Property Claims Commission reasoned that the Applicant had lost the title to the challenged immovable property as a result of privatization. The Applicant filed referral with the Constitutional Court, alleging violation of the right to property and that he has exhausted all legal remedies.

The Constitutional Court concluded that it cannot replace by its findings the findings of the regular courts or of other public authorities in the Republic of Kosovo, and added that the principle of subsidiarity is a very important one because it provides an opportunity for the Applicant to raise questions of fact and of law before the regular courts. The Constitutional Court declared the Referral inadmissible due to non-exhaustion of legal remedies, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI173/14
Applicant
Staja Savić
Constitutional review of Decision KPCC/D/C/264/2014 of the Kosovo Property Claims Commission of 21 October 2014

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Staja Savić from Ferizaj/Uroševac currently residing in Kraljevo, Republic of Serbia (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges the Decision KPCC/D/C/264/2014 of the Kosovo Property Claims Commission (hereinafter, the KPCC) of 21 October 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision KPCC/D/C/264/2014 of the KPCC of 21 October 2014 in relation to the Applicant's private property claim KPA 15121 of 1 September 2006.

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).

Proceedings before the Constitutional Court

5. On 1 December 2014, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 17 December 2014, the President of the 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 22 May 2014, the Applicant was notified about the registration of the Referral and was asked to fill in the referral form and submit additional documents relevant to his allegations.

8. On 16 January 2015, the Applicant filled in the referral form and submitted additional documents.

9. On 19 February 2015, the Applicant submitted additional documents including the KPCC decision pertinent to his private property claim.

10. On 15 September 2015, the Court sent a copy of the referral to the KPA and asked to be informed about the status of the Applicant's claim.

11. On 18 September 2015, the KPA submitted additional documents and information about the status of the Applicant's claim.

12. On 25 September 2015, a copy of the Referral was sent to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (hereinafter: the Special Chamber).

13. On 30 September 2015, the Special Chamber notified the Court that the Applicant did not file a complaint with them.

14. On 10 November 2015, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. On 20 March 1992, the Applicant as manager of the enterprise "ENIGMA" from Ferizaj/Uroševac struck an agreement with the enterprise DPT "TRGOPROMET" also from Ferizaj/Uroševac. The agreement was validated by the Municipal Court in Ferizaj/Uroševac and stipulated that the Applicant lends a certain amount of money to

the DPT "TRGOPROMET" which must be paid back to the Applicant by 10 April 1992, that as a guarantee that the loan will be paid back on the stipulated date the DPT "TRGOPROMET" invests a mortgage of unused warehouse premise area of 52 m^2 in Prishtina, that in case the DPT "TRGOPROMET" does not pay back the loan on the stipulated date the Applicant is entitled to sell the mortgaged warehouse premise, and that, the Commercial Court in Prishtina is the competent authority in case of any dispute between the parties to that agreement.

16. It appears that DPT "TRGOPROMET" did not pay back the loan to the Applicant as per the terms stipulated in the agreement. On an unspecified date the Applicant filed a statement of claim with the Commercial Court in Prishtina thereby claiming to be recognized as the owner of the mortgaged warehouse premise in Prishtina.

17. On 28 July 1992, the Commercial Court in Prishtina by Decision VI. P. no. 3851/92 approved the Applicant's statement of claim, confirmed that the Applicant is the owner of the mortgaged warehouse, that the DPT "TRGOPROMET" is obliged to transfer ownership and unhindered use of the mortgaged warehouse premise within eight (8) days under threat of forced execution, and that, the DPT "TRGOPROMET" must compensate to the Applicant the costs of the court proceedings. The Commercial Court reasoned, inter alia, that based on evidence adduced, it is beyond doubt, that the warehouse premise was mortgaged, that DPT "TRGROPROMET" did not pay back the loan to the Applicant, and that, pursuant to the - agreement struck between the parties - the Applicant has acquired the right to transfer the disputed warehouse premise under his ownership.

18. It appears from the documents contained in the referral that the Applicant between years 1992 until 1999 made use and refurbished the warehouse premise which was conferred to him as per terms of the agreement and the above-stated decision of the Commercial Court. In years 1998-1999 war broke out in Kosovo and the Applicant together with his family fled to the Republic of Serbia.

19. On 1 September 2006, the Applicant filed a claim for private property KPA15121 with the KPA stating that his private property was lost as the result of the circumstances arising during 98/99 in Kosovo, that he lost his property on 12 June 1999, that he is the owner of the warehouse premise in Prishtina pursuant to agreement of 20 March 1992, that his property is currently usurped by a third party, and that, he must be compensated because his property was used from 1999 without his consent. The Applicant also enclosed a ruling of the Commercial Court in Prishtina of 22 August 1996 on the registration of property.

20. The Kosovo Property Claims Commission (hereinafter, the KPCC) a body within the KPA did not rule on the Applicant's claim until 21 October 2014. During that time span the Applicant complained about excessive length of proceedings before the UNHCR, EULEX, the Government of Kosovo, made fresh complaints before the KPA and eventually filed a referral with the Court on 1 December 2014. The KPA had replied to the Applicant that they cannot rule on his claim due to large backlog of cases, some 43,000 claims, and that, his claim will be dealt with in accordance with the precedence of claims filed with the KPA.

21. On 21 October 2014, the KPCC by Decision KPCC/D/C/264/2014 held that the Applicant did not lose his ability to exercise his property right as a result of the 1998-99 conflict, but as a result of the subsequent privatization process, and that therefore, the claim of the Applicant falls outside the KPCC jurisdiction and stands to be dismissed. The KPCC Decision also held that within thirty (30) days of the notification to the parties by the KPA of a decision of the KPCC on a claim, a party may submit through the Executive Secretariat of the KPA to the Supreme Court of Kosovo an appeal against such decision. The appeal may be filed on the grounds of misapplication of the material and procedural law - as well as - the incomplete or erroneous determination of the factual situation.

22. The above-sated decision of the KPCC in its relevant part reads:

> *Claim Nos. 10676, 11322 and 15121, referred to in part D of the attached schedule, have been filed by the respective claimants in their capacity as the alleged property right holder. In all of these claims, the Claimants claim that they or their families lost the claimed properties as a result of the 1998-99 conflict. The Executive Secretariat has obtained information that the claimed properties belonged prior to the 1998-99 conflict to various socially owned enterprises ("SOEs") and as such had been placed under the administration of the Kosovo Trust Agency after the conflict, and subsequently, in 2002, under the administration of its successor, the Privatization Agency of Kosovo ("PAK"). According to the representative of PAK, the commercial properties belonged to SOEs which had already been privatized or are currently under liquidation. The Executive Secretariat has further established that the properties at issue in Claim Nos. 10676 and 15121 have been sold to a third party in the course of privatization process".*

The Relevant Legal Provisions

UNMIK REGULATION NO 2006/50 ON THE RESOLUTION OF CLAIMS RELATING TO PRIVATE IMMOVABLE PROPERTY, INCLUDING AGRICULTURAL AND COMMERCIAL PROPERTY

Chapter IV
The Right of Appeal
Section 12

Appeals

12.1 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.

12.2 Except otherwise provided in the present Regulation or in an Administrative Direction implementing the present Regulation, the provisions of the Law on Civil Procedures shall be applicable mutatis mutandis to the appellate proceedings before the Supreme Court.

12.3 The appeal may be filed on the grounds that:

(a) The decision involves a fundamental error or serious misapplication of the applicable material or procedural law; or

(b) The decision rests upon an erroneous or incomplete determination of the facts.

Comments by the KPA

The relevant part of the KPA reply (see paragraph 12 above) in relation to the status of the Applicant's claim reads: *"The KPCC, after assessment of the case-file, by Decision KPCC/D/C/264/2014 dated 21/10/2014, ruled that the claim filed by Mr. Savič was dismissed on the grounds of being outside the jurisdiction of the KPCC. Parties to this proceeding were notified of the KPCC decision whereas the claimant Mr. Staja Savič has filed an appeal against the KPCC decision. Please be informed that the appeal of Mr. Savič according to the standard procedure is in translation process and afterwards will be sent to the Supreme Court of*

Kosovo, Appeals Panel of the Kosovo Property Agency in order to be decided upon".

Applicant's allegations

23. The Applicant alleges that: *"The Privatization Agency of Kosovo (hereinafter: PAK), claim for private property KPA 15121 of date 1.9.2006, Dardanija Kicma 5/9 warehouse area of 52 m2 ruined, after reconstruction acquired an area of 104 m2 business premise, ground floor premise and Gallery floor to this day my claim has not been solved for 15 years. The usurper incorrectly uses my business premise, which he rents out thanks to the stalling from the PAK to solve the property relationship pertaining to which there is nothing contentious except their good will".*

24. In relation to allegation for excessive length of proceedings the Applicant stated: *"Pursuant to the European Convention for the Protection of Human Rights and Freedoms (hereinafter: ECHR) and the Constitution of Kosovo (hereinafter: the Constitution), Article 22, paragraph 1, Article 6 of the ECHR my property and human rights have been endangered, as well as my right to a hearing within a reasonable time limit".*

25. Furthermore, the Applicant asks the Court: *"I seek that my business premise located in Prishtina in Dardania, Kicma 5/9 is returned in my property. This is my only property from which I supported my family of five members and the same is under ownership since 1992. For its reconstruction I have invested huge amounts, whereas now I live with my family of five live on assistance as displaced persons. I am a citizen of Kosovo and I wish to return to Kosovo, but my property is used by MS from Prishtina".*

26. In relation to exhaustion of legal remedies the Applicant stated: *"There is no other claim, except the one submitted to the PAK, claim for private property KPA 15121 of date 1.9.2006. I considered that the KPA is the only state institution that is competent to solve the property relationships. I am a simple man and I could not use other legal remedies because I did not have the means".*

27. Finally, the Applicant asks the Court *"to find that the KPCC decision is unconstitutional".*

Admissibility of the Referral

28. 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.

29. 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."*

30. 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".*

31. The Court further takes into account Rule 36 1 (b) which foresee:

> *(3) The Court may consider a referral if:*
>
> ...
>
> *(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted ...*

32. In the concrete case, the Court notes that the Applicant's private property claim – as evidenced by the replies of the KPA and of the Special Chamber - is sent to the Appeal Panel of the KPA within the Supreme Court for further review.

33. It results that the Referral is prematurely filed with this Court. Nevertheless, the Applicant asks the Court *"to declare the KPCC decision as unconstitutional"*.

34. By such a request the Applicant is in a way asking the Court to absolve him from exhausting all legal remedies provided for by the Constitution and the Law.

35. In this respect, the Court considers that in order for the Applicant to be absolved from the requirement to exhaust all legal remedies it is incumbent on him to show that: i) the legal remedy was in fact used, ii) the legal remedy was inadequate and ineffective in relation to his case, and iii) there existed special circumstances absolving the Applicant from the requirement to exhaust all legal remedies. From the documents contained in the Referral there is nothing that suggests that the Applicant meets the criteria to be absolved from exhaustion of all legal remedies to his avail (see, for example, case no. KI116/14, Applicant *Fadil Selmanaj*, Resolution on Inadmissibility of 19 January 2015).

36. 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 Kl41/09, Applicant *AAB-RIINVEST University L.L.C., Prishtina*, Resolution on Inadmissibility of 21 January 2010, and mutatis mutandis, see case ECHR, *Selmouni vs. France*, No. 25803/94, ECtHR, Decision of 28 July 1999).

37. The Court reiterates that it cannot substitute its own findings for the findings of the regular court or other public authorities in the Republic of Kosovo; the principle of subsidiarity is a very important one because it provides an opportunity for the Applicant to raise questions of fact and of law before the regular courts; and in fact and in law, the regular courts are bound by the Constitution and the law to determine such questions (legality and facts) which however are not within the province of this Court.

38. Therefore, the Court considers that it cannot delve into the substance of the Applicant's referral without prejudice as to the outcome of the proceedings before the Supreme Court.

39. Bearing in mind all the foregoing, the Court considers that the Applicant's referral is premature.

40. It results that the referral must be declared inadmissible on the grounds of non-exhaustion of all legal remedies as provided for by Article 113(7) of the Constitution, Article 47.2 of 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 36 (1) (b) of the Rules of Procedure, on 10 November 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY 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
Ivan Čukalović

President of constitutional Court
Arta Rama-Hajrizi

KI177/14, Applicant Miodrag Janković - Constitutional Review of Decision U. Z -A. A. no. 6/2014, of the Supreme Court of Kosovo, of 21 July 2014.

KI177/14, Resolution on Inadmissibility of 21 July 2015, published on 22 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, equality before the law, judicial protection of rights, freedom of election and participation, the right to legal remedies, court fees*

The Supreme Court rejected to assess the merits of the Applicant's appeal due non-payment of the court fee, which was obligatory for all parties that file an appeal with the Supreme Court. The Applicant's complaint concerned the rights of his freedom of election allegedly denied by the Central Election Commission and the Election Complaints and Appeals Panel. The Applicant filed referral with the Constitutional Court mainly alleging violation of the right to free election and participation, and the right to legal remedies.

The Constitutional Court found that the Applicant was not denied the right to election and participation but he had not met the legal requirements to exercise his election rights, and moreover, added that the right to election is not absolute and it may be subject to legal limitations. The Constitutional Court added that the Applicant also did not present evidence for exemption from the payment of tax and that the Supreme Court's decision was lawful. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded in accordance with Article 47 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI177/14
Applicant
Miodrag Janković
Constitutional Review of Decision U. Ž-A. A. no. 6/2014, of the Supreme Court, of 21 July 2014.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Miodrag Janković from Komoran with permanent residence in Belgrade, Serbia.

Challenged Decision

2. The Applicant challenges Decision U. Ž-A.A. no. 6/2014, of the Supreme Court, of 21 July 2014.

Subject Matter

3. The subject matter is the constitutional review of the abovementioned decision. The Applicant also alleges Decision A. no. 7251/2014, of the Election Complaints and Appeals Panel (hereinafter: ECAP) of 2 June 2014, and Decision no. 20140806004875, of the Central Election Commission (hereinafter: CEC), which according to Applicant's allegations violated rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) under Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 45 [Freedom of Election and Participation] and Article 54 [Judicial Protection of Rights], as well as Article 3 of Protocol 1 [Right to free elections], Article 13 [Right to an effective remedy] and Article 14

[Prohibition of discrimination] of the European Convention of Human Rights and 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 13 January 2015, by Decision GJR. KI177/14, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 26 June 2015, the President of the Court by Decision KSH. KI177/14 replaced Judge Enver Hasani whose mandate ended and appointed Judge Arta Rama-Hajrizi as a member of the Review Panel.

8. On 21 January 2015, the Court informed the Applicant on the registration of the Referral, and requested from him additional documents: power of attorney for persons mentioned in the request for submission of official correspondence on his behalf and the CEC decision, which rejected his request for inclusion in the voters' list.

9. On 11 February 2015, the Court received from the Applicant the requested power of attorney, but not the CEC decision.

10. On 2 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. The Applicant was a resident of Kosovo, with residence in Fushë-Kosovë until June 1999, when he went to live in Belgrade, Republic of Serbia.

12. With an aim to exercise the right to participate in early parliamentary elections in 2004, the Applicant submitted the necessary documentation to be included in the electoral list.

13. On an unspecified date, the CEC rendered the Decision no. 2014080600875, which rejected the Applicant's request for inclusion in the electoral list on the ground that the Applicant did not meet the requirements under Article 5.1 of the Law on General Elections.

14. On 30 May 2014, the Applicant filed an appeal to the ECAP, challenging the CEC decision.

15. On 2 June 2014, the ECAP by its Decision A. no. 7251/2014 rejected the Applicant's appeal and upheld the CEC Decision, with the same reasoning that the Applicant did not fulfill the requirements for registration in the electoral lists under Article 5.1 of the Law on General Elections.

16. The Applicant filed an appeal against the ECAP Decision with the Supreme Court due to erroneous and incomplete determination of factual situation, erroneous application of the substantive law and substantial violation of the procedural provisions.

17. On 13 June 2014, the Kosovo Judicial Council Secretariat (hereinafter: KJC) sent to the Applicant the payment order filled and stamped by the Supreme Court for the payment of the court fee, in the amount of € 30.

18. On an unspecified date, the Applicant submitted to the Supreme Court a request for exemption from the payment of tax, due to poor financial situation.

19. On 21 July 2014, the Supreme Court rendered the Decision U.-Ž. A.A. no. 6/2014, by which rejected the Applicant's appeal.

20. In the reasoning of the Decision, the Supreme Court stated, ”*Pursuant to Article 2.4 of Administrative Direction no. 2008/02 on unification of the court fees, among other it is provided that the term application means a lawsuit, counter lawsuit, appeal. Pursuant to Article 6.1 of the said direction it is provided that the fee shall be paid at the time of filing the claim-appeal, whereas pursuant to Article 6.5 of the direction it is provided that the court shall reject the appeal if the appellant does not pay within the specified time limit the court fee on the submitted appeal*”.

21. The Supreme Court further concluded, that despite the fact that the Applicant received the notice to pay the tax he did not fulfill this obligation therefore, "*pursuant to this court's opinion the appeal shall be rejected".*

Applicant's Allegations

22. The Applicant alleges that the Supreme Court, by not considering the merits of the appeal denied him the judicial protection of his rights guaranteed by Article 54 of the Constitution, and put him in an unequal position before the law, which according to him, resulted in the denial of his right to participate in parliamentary elections, thus depriving him of his constitutional right under Article 45 of the Constitution, and Article 3 of Protocol 1 to the ECHR.

23. The Applicant further complains that the legal remedy for the appeal in his case was not effective since it did not allow him to exercise his right therefore, he alleges that there is violation of Article 32 of the Constitution in conjunction with Article 13 of the ECHR, which guarantee the right to effective remedy.

24. The Applicant requested the Court to adjudicate compensation for material damage in the amount of € 30.00, on behalf of the court fee.

Admissibility of the Referral

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

26. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

27. The Court also refers to Rule36 of the Rules of Procedure, which provides:

> *(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.

28. As stated above, the Applicant addresses the Court with the request to assess the question of whether the Decision of the Supreme Court, of 21 July 2014 and the decisions of the CEC and the ECAP have denied him the participation in parliamentary elections in Kosovo in 2014, and this resulted in violations of the Constitution and of the ECHR, as stated in item three of this report.

29. The Court further notes that despite a written request, the Applicant did not submit the CEC decision, which rejected his application for inclusion in the voters' list, therefore, the court cannot assess whether this decision caused violation of the Constitution to the detriment of the Applicant.

30. Under Rule 29, paragraph 4 of the Rules of Procedure, it is the duty of the Applicant to attach the necessary documents to his Referral, indicating the alleged violations. It is not the duty of the Court to build the case instead of the Applicant, or to request documents *ex officio,* which would eventually be in his favor.

31. The Court notes that the Law on General Elections in the Republic of Kosovo, promulgated by the Decree of the President of the Republic of Kosovo, no. DL-027-2008, of 15 June 2008, provides that each person to exercise the constitutional right to participate in the elections must meet the following criteria:

Article 5 - Voter Eligibility

5.1 A person is eligible to vote in an election in accordance with the present Law if he or she is at least eighteen (18) years of age on the day of the election and satisfies at least one of the following criteria:

a) he or she is registered as a citizen of Kosovo in the Central Civil Registry;

b) he or she is residing outside Kosovo and left Kosovo on or after 1 January 1998, provided that he or she meets the criteria in applicable legislation for being a citizen of Kosovo; or

c) he or she obtained the status of a refugee, as defined in the Convention Relating to the Status of Refugees of 28 July 1951 and its Protocol of 16 December 1966, on or after 1 January

1995, and is eligible to be registered in the Central Civil Registry as a habitual resident of Kosovo.

32. In this respect, the Court emphasizes that the ECAP rendered the Decision A. no. 7251/2014 on 2 June 2014, by which rejected the Applicant's appeal against the CEC Decision, by stating that *"pursuant to Article 5.1 of the Law on General Elections, the Applicant did not meet the requirements to be registered in the List of Voters"* and did not find that the CEC Decision contains legal violations, as alleged by the Applicant.

33. The Court further considers that, based on the ECAP competencies, which are provided by Law no. 03/L-256 on amending and supplementing the Law no. 03/L-073 on General Elections in the Republic of Kosovo published in the Official Gazette no. 87 on 16 November 2010, which in Article 1 provided "*ECAP" shall mean the Elections Complaints and Appeals Panel, an independent body in charge of adjudicating complaints and appeals concerning the electoral process".*

34. In addition, as noted above it is clear that the CEC and the ECAP are the bodies established by law, to decide whether the Applicant has fulfilled or not the requirements provided by law to be included in the list of voters, and it is not the task of the Constitutional Court to determine these facts because they are of legal, and not of the constitutional nature.

35. The 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 regular courts, or in the present case of the independent bodies. It is the role of regular courts or of the administrative bodies to interpret and apply pertinent rules of procedural and substantive law (See, *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).

36. In these circumstances of the case, the Court considers that the Applicant's request for participation in the elections was approved, whereas by CEC decision it was concluded that he did not meet the legal requirements to be included in the voters' list, and he was allowed the appeal procedure, where his appeal was rejected. Therefore, taking into account the conducted proceedings, the Court cannot conclude that there has been violation of Article 45 of the Constitution [Freedom of Election and Participation] and Article 3 of

Protocol 1 of the ECHR [Right to free elections] , for the mere fact that the result of the application of the Applicant was unfavorable for him.

37. Moreover, the Court notes that "the right to elect and be elected" provided by the Constitution or "the right to free elections" provided by Protocol 1 of the ECHR is not an absolute and unlimited right, but it may be the subject of legal limitations in each state separately.

38. In case *Schindler v. United Kingdom*, the European Court of Human Rights (ECHR) found no violation of Article 3 of Protocol 1 to the ECHR when rejected the right to participate in the general elections in Britain held on 5 May 2010, to a person who has not lived in the UK for a longer period of time than the time specified by the applicable law and that this right shall be subject to limitations provided by the British law at the time (See, ECHR Judgment in case *Schindler v. United Kingdom,* on 7 May 2013- Application no. 19840/09).

39. Regarding the issue of the rejection of the Applicant's appeal by the Supreme Court due to non-payment of the court fee, the Court finds that the Decision of the Supreme Court was rendered based on a legal act (Administrative Direction No. 2008/02 of KJC) that regulates this matter and as such is not an arbitrary and ungrounded act.

40. Furthermore, in the reasoning of its decision the Supreme Court cited Article 6.5 of the Direction, where it is clearly defined "*If fees are not paid by the appellant on the date they are due, the court shall reject the appeal if the appellant does not pay within the specified time limit the court fee due"*.

41. The Applicant cannot substantiate his allegation by any evidence that would indicate that certain persons are exempted from the payment of court fees or that this obligation applies only to certain groups of the population as alleged in the appeal. It is quite clear that the Applicant did not submit evidence, which would show that this decision is an indicator of the alleged violations of inequality before the law, or even legal discriminatory act.

42. Furthermore, the Constitutional Court in the Resolution on Inadmissibility in case KI121/13, Applicant *L.M.* found that the Decisions of the Basic Court in Gjakova, of 8 May 2013 and of the Court of Appeal, of 12 July 2013, which rejected the Applicant's appeals due to non-payment of the court fees, were not incompatible with the Constitution and this Court concludes that the court fees are obligatory for all applicants regardless of population group, and that on the same issue all parties have been equally treated before the law.

43. In these circumstances, the Court cannot find violation of Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution and Articles 14 [Prohibition of discrimination] and Article 13 [Right to an effective remedy] of the ECHR.

44. The Court in the response to the Applicant's request for the compensation of the suffered material damage states that based on the Constitution and the Law, it has no jurisdiction to adjudicate such a damage.

45. In sum, the Court considers that the Applicant did not sufficiently substantiate his allegations.

46. Therefore, the Referral is manifestly ill-founded, and as such, inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 47 of the Law, and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 2 July 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI83/15, Applicant Shefqet Mehmetukaj - Constitutional review of Decision E. Rev. no. 49/2014, of the Supreme Court of Kosovo, of 23 December 2014

KI83/15, Resolution on Inadmissibility of 11 November 2015, published on 22 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, right to legal remedies, customs and excise code, compensation for damages, customs offenses*

The Supreme Court rejected as ungrounded request for revision submitted by the Applicant for compensation of damage by the customs authorities of Kosovo, after his innocence for customs offense was proved. The Applicant filed complaint with the Constitutional Court for violation of the right to fair and impartial trial and the right to legal remedies.

The Constitutional Court noted that the Applicant is not, mainly, satisfied with the legal qualification of the facts and the law applied by the regular courts, and that he has not submitted any *prima facie* evidence of violation of his constitutional rights. The Constitutional Court declared the Referral inadmissible as manifestly ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI83/15
Applicant
Shefqet Mehmetukaj
Constitutional review of Decision (E. Rev. no. 49/2014) of the Supreme Court of Kosovo, of 23 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Shefqet Mehmetukaj, owner of the company MTE „Sinorg-Pharmaceuticals“ (hereinafter: the Applicant) Gračanica, who is represented by lawyers Mr. Blerim Prestreshi and Mr. Hekuran Haxhimusa, both based in Prishtina.

Challenged Decision

2. The Applicant challenges Decision (E. Rev. no. 49/2014) of the Supreme Court of Kosovo, of 23 December 2014, which was served on the Applicant on 18 February 2015.

Subject Matter

3. The subject matter is the request for constitutional review of the abovementioned Decision of the Supreme Court. The Applicant alleges that in the proceedings before the regular courts Articles 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) were violated.

Legal Basis

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

Proceedings before the Constitutional Court

5. On 18 June 2015, the Applicant submitted via mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 August 2015, by Decision GJR. KI83/15, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH. KI83/15, the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

7. On 15 September 2015, the Court informed the Applicant about the registration of the Referral.

8. On 16 September 2015 the Court requested from the Supreme Court of Kosovo to submit evidence showing when the Supreme Court's decision (E. Rev. no. 49/2014) was served on the Applicant.

9. On 23 September 2015, the Supreme Court of Kosovo submitted the requested documentation.

10. On 11 November 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. On 9 January 2009, the Applicant presented a shipment of goods for export at the Vërmica Customs terminal.On the same date, the Kosovo Customs - Customs Offenses Commission, by Decision no. 08/701, decided that the Applicant was liable for a customs offense and was fined the amount of 7,000.00 euro, because he had not properly presented the country of origin of the goods declared for export.

12. The Applicant states that since the goods, which were loaded onto the transport vehicle, could not be exported to the end-destination

without paying the administrative penalty and without declaring those as originating from a different country of origin,the goods and the transport vehicle *"were left in the Vërmica Customs terminal"*.

13. On 14 January 2009, the Applicant filed an appeal with Kosovo Customs - Decisions Review Sector at the Customs Service against Decision (no. 08/701) of the Customs Offenses Commission.

14. On 30 January 2009, the Kosovo Customs - Decisions Review Sector, by Decision (06.1.4. no. 34), rejected the appeal in its entirety and upheld Decision (no. 08/701) of the Customs Offenses Commission.

15. On 28 February 2009, the Applicant filed an appeal with the Independent Review Board (hereinafter: IRB) against Decision 06.1.4. no. 34 of the Kosovo Customs - Decisions Review Sector.

16. On 26 March 2012 the IRB, by Decision (A. no 76/2009- SHD) approved the appeal of the Applicant in its entirety and exempted him from paying the administrative fine in the amount of 7,000 euro. The IRB considered further that,

    "The IRB cannot render a decision for the matter which was not the subject of the contest, since in the present case the appellant had to complete the export procedure or, on the contrary, to request the return of the goods which were expired, and in case if it would not be allowed, then the appellant would have been entitled to request an explanation from the Customs for the legal basis and the reason of the goods confiscation in the terminal.

    [...]

    Regarding the appealed allegation for the goods confiscated in Vërmica Customs terminal, the IRB ascertained that there is no decision for temporary ban or confiscation of the goods in question in the case files."

17. The IRB concluded with the following *"legal advice":*

    "This Decision is final in the administrative proceedings, whereas the dissatisfied party has a right to appeal against this Decision with the Supreme Court of Kosovo within 30 days from the day of service, under the Law No. 03/L-109 of the Customs and Excise Code of Kosovo. The claim against this decision does not stay the execution of the decision, which is binding for the parties until it is modified or annulled by the court".

18. On 8 November 2012, the Applicant filed a claim for compensation of damages with the District Commercial Court in Prishtina. By this claim, the Applicant requested the court to oblige the "*Kosovo Customs to pay the damage compensation to the claimant at the amount of 38,764.80 € (the equivalent value of the goods which expired due to the fault of the Customs) and to compensate the damage in the name of the blockage of transport vehicle from 25.12.2008 until the day when the claim was filed, according to the financial expertise.*"

19. On 19 November2012,the District Commercial Court in Prishtina, by Decision (I. C. no. 258/2012) "*declared [itself] absolutely incompetent to decide on this contested matter*" and rejected the Applicant's claim.

20. On 21 January 2013, the Applicant filed an appeal with the Court of Appeal of Kosovo against Decision (I.C. No. 258/2012) of the District Commercial Court in Prishtina.

21. On 10 July 2014, the Court of Appeal of Kosovo by Decision (Ae. no. 30/2013) rejected the appeal as ungrounded and upheld Decision (I.C. No. 258/2012) of the District Commercial Court in Prishtina, of 19 November 2012.

22. On 1 October 2014 the Applicant filed a request for revision with the Supreme Court of Kosovo against Decision (Ae. no. 30/2013) of the Court of Appeal in Prishtina, of 10 July 2014.

23. On 23 December2014, the Supreme Court of Kosovo, by Decision (E. Rev. no. 49/2014) rejected as ungrounded the Applicant's request for revision, with the following reasoning:

> "*... The matter between the litigating parties was decided pursuant to the Law on Kosovo Customs and Excise Code No. 03/L-109, as a special law, which foresees the obligations of the Customs when a case is ultimately resolved in the last instance, for goods and obligations in the amount equivalent to the one of the market for the contested goods at the moment when it is caused, therefore according to the assessment of the Supreme Court, the lower instance courts have correctly applied the legal provisions when deciding as per the enacting clause of the challenged decision, on the basis of which it was considered that the allegations mentioned in the Revision for the erroneous application of the contested procedure provisions are ungrounded.*
> *The Court reviewed the allegation according to which the administrative matter was ultimately decided in the favor of the claimant and he had no interest to challenge the decision of the*

administrative body, however, it had no influence in rendering a different decision, because the mentioned Law provided the obligation of the parties for payment, caused by the actions of the parties in the proceedings. "

Applicant's allegations

24. The Applicant first alleges that the regular court proceedings violated the rights guaranteed by Articles 31 (Right to Fair and Impartial Trial) and 32 (Right to Legal Remedies) of the Constitution.

25. The Applicant considers that by Decision (A. no. 76/2009-SHD) of the Independent Review Board, of 26 March 2012, the administrative dispute was completed by final decision and that the Applicant won the case because "*it was confirmed that the fine was imposed based on no grounds and, at the same time, the imposed fine was annulled.*"

26. The Applicant further alleges that he is the party that has won the dispute and that there was no need to act based on the legal advice provided in the decision of the Independent Review Board to further continue proceedings before the Supreme Court in the administrative dispute.

27. The Applicant alleges that he could not request compensation of damage because he did not know what will be the outcome of the dispute until the last instance when it was determined that he had properly declared the goods.

28. The Applicant considers that he could claim the damage caused by unlawful actions of Kosovo Customs only in contested proceedings under Article 136 of Law no. 04/L-077 on Obligational Relationships.

29. The Applicant further considers that the Decision by which the District Commercial Court in Prishtina was declared incompetent and then by upholding this decision by the Court of Appeal and the Supreme Court, the Applicant was prevented to request the protection of his right through the court, and that he was also denied the right to legal remedy.

30. The Applicant request the Court that: "*after holding the violation of the constitutional provisions, to remand the case to the Supreme Court of Kosovo for retrial so that the party is granted with the realization and exercise of the rights guaranteed by item 1 of Article 31, Right to Fair and Impartial Trial and Article 32 Right to Legal Remedies, of the Constitution of the Republic of Kosovo*".

Admissibility of the Referral

31. The Court shall examine whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and further specified in the Law and the Rules of Procedure.

32. 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."*

33. In addition, the Court recalls Rule 36 (2) (b) of the Rules of Procedure, which provides:

> *"(2) The Court shall declare 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."*

34. The Applicant alleges that by the challenged judgment his right to equality before the law and his right to a legal remedy have been violated, since the regular courts have erroneously considered that the Customs and Excise Code of Kosovo applied to his claim for compensation instead of the Law on Obligational relationships.

35. The Court notes that the Applicant repeats the same allegations as those stated in the proceedings of the request for revision before the Supreme Court of Kosovo, which by decision (E. Rev. no. 49/2014) of 23 December 2014, gave a reasoned answer to all of the Applicant's allegations, related to the reasons for applying respective rules of the procedural and substantive law.

36. The issue of the applicable law was clearly indicated to the Applicant even in decision (A. no. 76/2009- SHD) of the Independent Review Board of26 March 2012, which in its legal advice stated that:

> *"The dissatisfied party is entitled to file a claim with the Supreme Court of Kosovo against this Decision, within 30 days from the day of receipt, according to the Law No. 03/L-109, Customs and Excise Code of Kosovo."*

37. The Court notes that the Applicant is not, mainly, satisfied with the legal qualification of the facts and the law applied by the regular courts. Legal qualification of the facts and applicable law are matters which fall under the domain of legality.

38. The 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. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case: *Garcia Ruiz vs. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima,* Resolution on Inadmissibility, of 16 December 2011).

39. The Applicant has not submitted any *prima facie* evidence of violation of his constitutional rights (see: *Vanek vs. Slovak Republic*, no. 53363/99, ECHR Decision as to admissibility of application, of 31 May 2005).

40. Even though, the Applicant claims that his rights have been violated due to the erroneous qualification of the facts and the law applied by the regular courts, he did not prove that the above-mentioned decisions have violated his constitutional rights.

41. The Court further reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings in his case, cannot of itself raise an arguable claim for breach of the Constitution (see: *mutatis mutandis*, ECHR Judgment NO. 5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).

42. The Applicant was afforded the opportunity to present his case and to challenge the interpretation of the law, which he considers is wrong, before the District Commercial Court in Prishtina, the Court of Appeal in Prishtina and the Supreme Court of Kosovo, in the regular court proceedings.

43. After the review of the proceedings in its entirety, the Court has not found that the respective proceedings were in any way unfair or arbitrary (see: *mutatis mutandis,Shub against Lithuania*, ECHR Decision on admissibility of application No. 17064/06, of 30 June 2009).

44. The Court considers that the admissibility requirements were not met. The Applicant has failed to show and substantiate the allegation that his constitutional rights and freedoms have been violated by the challenged decision.

45. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 paragraph 7, Articles 20 and 48 of the Law, and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 11 November 2015, 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; and

IV. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KO 130/15, The President of the Republic of Kosovo – Concerning the assessment of the compatibility of the principles contained in the document entitled "*Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*" with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo

KO 130/15, Judgment of 21 December 2015, published on 23 December 2015.

Keywords: *Institutional referral, abstract control, preventive constitutional control, jurisdiction and authorized parties organization of units of local self-governance, civil service, Chapter II and III of the Constitution.*

The President of the Republic of Kosovo in accordance with Articles 84 (9) submitted a referral with the Constitutional Court of the Republic of Kosovo. The Referral contained a request for the assessment of the compatibility of the principles contained in the document entitled "Association/Community of Serb municipalities in Kosovo - general principles/main elements" with the spirit of the Constitution, Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo.

Before providing substantive answers to the particular constitutional questions posed by the Applicant, the Court positively determined two procedural questions by stating that the Applicant is an authorized party and that the document contained in the Referral can be subject to constitutional review. The Court elaborated on the background of the document under review namely by making reference to the First Agreement on the Normalization of Relations between the Republic of Kosovo and Republic of Serbia and moreover sought the opinion of two legal experts by way of *amicus curia* briefs.

As to the substantive aspect of the Referral, the Constitutional Court found that some general principles contained in the document under constitutional review do not entirely meet the constitutional standards enshrined in the Constitution of the Republic of Kosovo. The Court stated that any legislation or document stemming from the document under constitutional review must be in full compliance with the provisions of the Constitution of the Republic of Kosovo namely: (i) Chapters II and III of the Constitution with regard to the fundamental human rights and the rights of Communities, (ii) matters of local self-government and matters related to the status of Civil Service in the Republic of Kosovo. The Court backed up its reasoning by

relying largely on the Provisions of the Constitution of the Republic of Kosovo, legislation on matters of local self-government and civil service respectively, various international legal instruments, the case-law of Constitutional Court of the Republic of Kosovo and the relevant case-law of the European Court of Human Rights.

JUDGMENT
in
Case No. KO130/15
Applicant
The President of the Republic of Kosovo
Concerning the assessment of the compatibility of the principles contained in the document entitled *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements"* with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy- President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and, Bekim Sejdiu, Judge

Applicant

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

Subject matter

2. The Referral contains a request for the assessment of the compatibility of the principles contained in the document entitled *"Association/Community of Serb municipalities in Kosovo – general principles/main elements"* (hereinafter: the "Principles") with the spirit of the Constitution, Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

3. Specifically, the Applicant requests that the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") responds to the following question:

> *"Taking into consideration that the Principles of Association regulate the creation and functioning of the Association of the municipalities with Serb majority in Kosovo, are these principles and elements compatible with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo?"*

4. In addition, the Applicant requests from the Court to impose an interim measure, such that, *"each activity and effect produced by the Principles of Association is suspended, [the Applicant] requests that the Court places a temporary measure on the issue raised until the final decision [of the Court]".*

Legal basis

5. The Referral is based on Article 84(9) in conjunction with Article 112.1 of the Constitution, Article 16.2 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56(a) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 31 October 2015 the Applicant submitted the Referral to the Court.

7. On 02 November 2015the President of the Court, by Decision GJR. KO130/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH. KO130/15, the President of the Court appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

8. On 03 November 2015 the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit copies of the text of the document entitled *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*" in the official languages of the Republic of Kosovo.

9. On 04 November 2015 the Applicant submitted the text of the document entitled *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements"* in the

official languages of the Republic of Kosovo, and including an initialed copy in the English language.

10. On 05 November2015 the Court submitted a copy of the Referral to the President of the Assembly of Kosovo with the explicit request for it to be submitted to all Deputies of the Assembly, and invited the Deputies to submit their comments on the Referral by 19 November 2015. The Court did not receive any comments.

11. On 05 November 2015 the Court submitted a copy of the Referral to the Prime Minister of the Government of the Republic of Kosovo, and to the Ombudsperson, and invited them to submit their comments on the Referral by 19 November 2015. The Court did not receive any comments.

12. On 10 November 2015 after having heard the Judge Rapporteur and having discussed the request for an interim measure submitted by the Applicant, the Court decided to grant the Request for Interim Measures until 12 January 2016 (See KO130/15, Decision on Interim Measure of 10 November 2015).

13. On 13 November 2015 in accordance with Rule 53 of the Rules of Procedure and the Practice Direction No. 01/2012 on Guidelines and Procedures for the Submission of *Amicus Curiae* Briefs, the Court invited Mr. Dastid Pallaska and Mr. Kushtrim Istrefi to prepare by 26 November 2015, in writing, *Amicus Curiae* Briefs.

14. On 13 November and 16 November 2015 respectively, Mr. Kushtrim Istrefi and Mr. Dastid Pallaska informed the Court of the receipt of the letter and also notified the Court that they would prepare and submit the *Amicus Curiae* briefs within the deadline requested by the Court.

15. On 16 November 2015 the Court sent a letter to the Prime Minister requesting him to provide the Court with the following information:

    "Within the Referral the Constitutional Court has received copies of the "General Principles/Main Elements of the Association/Community of Serb majority municipalities" in three languages. You are kindly requested to inform the Court, which of these language versions is original and authentic. Specifically, is the English version the authentic version? Or are the Albanian and Serbian version equally authentic? Or are all three versions equally authentic?"

16. On 19 November 2015 the Court received the following response submitted by the Prime Minister:

"[...]

- *General principles/main elements of the Association/Community of Serb majority municipalities were signed by the parties in the English language.*

- *The delegation of the Republic of Kosovo, during the entire preparatory and consultative work and during all the time of the discussions and negotiations in Brussels, regarding the agreed principles used the Albanian language, considering it as authentic and original language, with respect to the implementation of these principles in practice.*

- *The text and all included and agreed terms by the parties in the "General principles/main elements of the Association/Community of Serb majority municipalities", during the entire negotiation process and before the agreement, were continuously translated into Albanian language, the latter were assessed, compared and were based on the meaning of the same notions from the Constitution and the laws of the Republic of Kosovo.*

- *For the delegation of the Republic of Kosovo, as original and authentic language version during the entire process of negotiations, was considered and accepted the version of principles translated into Albanian language, as the first official language in the Republic of Kosovo.*"

17. On 26 November 2015 the Court received the *Amicus Curiae* brief submitted by Mr. Kushtrim Istrefi. On the same date the Court granted to Mr. Dastid Pallaska an extension of the deadline until 1 December 2015 for the submission of his *Amicus Curiae* brief.

18. On 01 December 2015 the Court received the *Amicus Curiae* brief submitted by Mr. Dastid Pallaska.

19. On 03 December 2015, the Court sent both *Amicus Curiae* briefs for comments to the Applicant and invited the Applicant to submit comments on the briefs by 9 December 2015. The Court did not receive any comments.

20. On 18 December 2015, the Court received a letter from the Parliamentary Group Lista Srpska, notifying the Court that they will submit their comments on the referral by 21 December 2015.

21. On the same date, the Court informed the Parliamentary Group Lista Srpska, that the deadline for submitting comments expired on 19 November 2015 and as there was no request for extension of the deadline, thus the Court will not consider their comments.

22. On 21 December 2015, the Court deliberated and decided on the case.

Invitation for Submission of *Amicus Curiae* Briefs

23. In its invitation for the Submission of *Amicus Curiae* briefs addressed to Mr. Pallaska and Mr. Istrefi, the Court asked their respective opinions on the subject matter of this Referral, as well to receive a response to a number of specific questions, namely:

    1. *"The Referral has been submitted on the basis of the competence of the President of the Republic of Kosovo to refer constitutional questions to the Constitutional Court under Article 84 (9) of the Constitution. What is the meaning and scope of the term 'constitutional question' contained in this provision according to Kosovo constitutional theory and practice? Please, provide an opinion based on your expertise and a constitutional comparative perspective.*

    2. *Based on the "General Principles/Main Elements of the Association/Community of Serb majority municipalities" (hereinafter: the "General Principles") according to your opinion, does the Association/Community comply with the Constitution of the Republic of Kosovo? Specifically,*

       a. *What is the legal nature of an association of municipalities?*
       b. *Related to associations of municipalities, what is usually normatively regulated and to what extent?*
       c. *What is the status of the employees in the administration of such Associations?*

    Please, provide your opinion based on your expertise and constitutional comparative perspective.

    3. *Based on the "General Principles" more precisely the part regulating the relations of the Association/Community with central authorities, according to your opinion, are such arrangements in compliance with the Constitution of the Republic of Kosovo?*

    4. *According to your opinion, do the "General Principles" grant this Association/Community executive competencies? What is*

an executive competence vis-à-vis an association of municipalities?

5. *What would be your comment on the procedures set out in the "General Principles/Main Elements of the Association/Community of Serb majority municipalities" to implement these principles into the statute through a government decree?"*

***Amicus Curiae* Briefs**

Amicus Curiae submitted by Mr. Kushtrim Istrefi

24. On 26 November 2015 Mr. Kushtrim Istrefi (hereinafter: Istrefi *Amicus Curiae*) has submitted his *Amicus Curiae* Brief, providing answers to the questions that were raised by the Court in the invitation of 13 November 2015.

25. Istrefi *Amicus Curiae*, in his brief, initially identifies the constitutional question in the present case, by referring to the Court's case-law, namely Case No. KO80/10 and Case No. KO97/10, where the Court declared itself competent to interpret constitutional provisions upon the request of President of the Republic and Acting President of the Republic, respectively. Namely the Court noted that,

> *"In accordance with Article 112.1 of the Constitution, "the Constitutional Court is the final authority for the interpretation of the Constitution" and because of* that *there is no other body from whom the Applicant may seek an answer to these constitutional questions. The Court is of the opinion that the questions raised by the Applicant are "constitutional questions" that are contemplated by Article 84 (9) and that the questions raised are fit to be addressed by the Court."*

26. Further, Istrefi *Amicus Curiae*, upon an analysis and comparison of the present case with previous cases submitted by the President of the Republic, concluded that:

> *"This form of review, known as abstract review allows "a court … to examine the actions of the legislative and executive bodies of government before or after promulgation and to determine if these actions are in accordance with the country's constitution". There are practices of abstract review even in the absence of an actual case of controversy.*

The present Referral may therefore be seen as a request for review of the compatibility of the General Principles with the Constitution as a whole"

27. In addition, Istrefi *Amicus Curiae* provides an analysis concerning legal issues concerning associations of municipalities, concentrating on the right of municipalities to form or join associations and the issue of inter-municipal cooperation.

28. In this respect, Istrefi *Amicus Curiae* reviewed legal provisions of Law No. 03/L-040 on Local Self-Government of Kosovo, which regulate the issue of associations of municipalities, providing that they *"may offer to its members a number of services, including training, capacity building, technical assistance as well as research on municipal competencies and policy recommendation in accordance with law."*

29. In this connection, Istrefi *Amicus Curiae* took as an example "*the National Association of Municipalities in the Republic of Bulgaria is entitled to "[represent and defend] the interests of its members before the National Assembly, the President of the Republic of Bulgaria, the Council of Ministers, the ministries and central government agencies, whose activities have a bearing on local government".* However, according to the Istrefi *Amicus Curiae*, *"Such representation role of these types of associations does not however extend to the right to establish units of self-government authorized to perform public functions."*

30. In addition, Istrefi *Amicus Curiae* states that *"The activities of the association of municipalities do not therefore reduce or substitute the constitutional and legal arrangements of cooperation and supervision of municipalities by central authority."*

31. With regard to the issue of inter-municipal cooperation, Istrefi *Amicus Curiae* refers to the European Charter of Local Self-Government, which in its article 10.1 provides that *"[l]ocal authorities shall be entitled, in exercising their powers, to cooperate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest".*

32. In this connection Istrefi *Amicus Curiae* is of the opinion that *"inter - municipal cooperation has "operational and coordination tasks... Operational tasks refer to the joint production of public services... Coordination tasks refer to the regulation of externalities of local policies and to an allocation of resources and costs that is rational from a supra-local perspective".*

33. Further in his brief, Istrefi *Amicus Curiae* refers to the Belgian Constitution, which in its Article 162.4 *"… provides for the possibility of local authorities, if they so desired, to jointly exercise public functions in certain areas of common interest. On this basis, Belgium municipalities have set up an entity called Intercommunale to perform certain public services in the areas including but not limited to waste collection, distribution of water and gas. This form of inter-municipal cooperation can be extended to other areas of public service if not limited by the Constitution or law."* In this manner, *"inter-municipal cooperation may exercise certain executive functions."* However it *"does not extend to creation of a new self-government unit exercising public functions independently and without the control of its members."*

34. In conclusion, Istrefi *Amicus Curiae* states that *"A body established for the purpose of inter-municipal cooperation is founded by and operates for municipalities. Hence, municipalities delegate their competencies and resources to this body. Furthermore, municipalities cannot delegate competences, which by Constitution or law are to be exercised only by democratically elected bodies of the municipalities."* In addition, "*… because inter-municipal bodies are formed to perform certain municipal functions or services, the central government continues to monitor and review the work of such bodies through the laws and principles of local self-government."*

35. Further in his brief, Istrefi *Amicus Curiae*, provides his opinion with regard to the provision that are compatible with the Constitution.

36. In this respect, it is stated in his brief that the Constitution recognizes the right of inter-municipality cooperation and it is guaranteed by Article 123.3 of the Constitution, which in addition to this *"… provides for respect and implementation of the European Charter of Local Self-Government."*.

37. Furthermore, Istrefi *Amicus Curiae* refers to Article 123.4, which provides that: *"Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members."*

38. In this connection, Istrefi *Amicus Curiae* states that *"Through the form of inter-municipal cooperation, the Association/Community may perform at least the functions under paragraphs a, g, h, i, j, k, l, m of Article 4 of the General Principles."*

39. However, he points out that *"This does not mean that an inter-municipal body can exercise control over those areas in a form of a distinct unit of self-government. As outlined above, the right to inter-municipal cooperation does not include a permanent transfer or loss of municipality competences."*

40. Istrefi *Amicus Curiae* continues his brief by providing his opinion with regard to the provisions that are incompatible with the Constitution.

41. In this respect, Istrefi *Amicus Curiae* states that certain "*provisions of the General Principles, in their explicit or ambiguous wording, raise constitutional concerns and part of them are not in harmony with, inter alia, Article 12, Chapter X, Article 113 and the spirit of the Kosovo Constitution."*

42. In this connection, Istrefi *Amicus Curiae* is of the opinion that the term "legal entity" of "distinct character" provided in Point 2 could also imply recognition of a distinct unit of self-government empowered to exercise public functions. Therefore *"Such a distinct and higher form of self-government exceeds the limits of the concept of inter-municipal association or cooperation under the Kosovo Constitution."*

43. Further, Istrefi *Amicus Curiae* provides that Points 2 and 15 of the General Principles can be incompatible with Article 124.4 and 12.2 of the Constitution, since according to these constitutional provisions *"... only a law can govern the matters of inter-municipal cooperation."*

44. In addition, Istrefi *Amicus Curiae* expresses his remarks with regard to the terminology used in point 4 of the General Principles, especially the phrase "exercise full overview, according to him is unclear, cannot be found in legal literature, or jurisprudence, and it *"does not appear in the database of the European Court of Human Rights, Court of Justice of the European Union or in any other legal text available on Internet."*

45. Istrefi *Amicus Curiae* continues his brief by providing that Point 8 of the General Principles *"... places the Association/Community in a horizontal level of cooperation with the central government. This in turn resembles a form of confederation where territorial units cooperate on a horizontal level based on mutual cooperation and information sharing. No form of local self-government or even regional self-government recognizes such horizontal relationship with central authorities."* Therefore, according to his opinion, this can be incompatible with Article 93.6 which grants the mandate to the

Government of Kosovo *"… to guide and oversee the work of administration bodies."*

46. Further, Istrefi *Amicus Curiae* explains that Point 11 of the General Principles is in contradiction with Article 113 of the Constitution, which regulates the issue of authorized parties for submitting referrals to the Constitutional Court. In this direction, in his opinion *"The Association/Community as a body exercising public functions neither qualifies as an individual to initiate cases before the Constitutional Court pursuant to 113.7 of the Constitution."*

47. In addition, Istrefi *Amicus Curiae* points out that inability to leave the Association/Community, as set out in Point 17 of the General Principles, may *"raise a constitutional concern of a regional self-government in that certain municipalities may have a pre-determined belonging to such an edifice."*

48. Finally, Istrefi *Amicus Curiae* concludes his brief by stating that "*the constitutional review of the General Principles should not amount to indirect review of the First Agreement on the Normalization of Relations",* despite the fact that certain provisions of the General Principle may not be identical, but they are related. In this direction, according to him *"… the Constitutional Court should be mindful that the review of the General Principles may amount to indirect review of the Agreement. This in turn may lead to violation by Kosovo of its ratified treaty obligations."*

49. Istrefi *Amicus Curiae* ends his brief by pointing out differences between the First Agreement and the General Principles. In this direction he states that *"Unlike the General Principles, the Agreement does not define the Association/Community as a "legal entity" of a "distinct character"; does not provide for its establishment by a decree of the Government; and does not specify its resources, budget, administration and competences contained in the General Principles. Instead, it provides that the competences of the Association shall be exercised in accordance with the European Charter of Local Self-Government and that the structures of the Association/Community shall be established on the same basis as the existing statute of the Association of Kosovo Municipalities."*

Amicus Curiae submitted by Mr. Dastid Pallaska

50. On 1 December 2015, Mr. Dastid Pallaska (hereinafter: Pallaska *Amicus Curiae*) has submitted his *Amicus Curiae* Brief, providing answers to the questions that were raised by the Court in the invitation of 13 November 2015.

51. Pallaska *Amicus Curiae*, in his brief, initially discusses the admissibility of the referral, by analysing constitutional provisions, which according to him are applicable in this case, namely Article 84, paragraph 9, Article 112 and Article 113, paragraphs 2 and/or 3 of the Constitution.

52. In this respect, Pallaska *Amicus Curiae* is of the opinion that *"... the President does not have a broad and unlimited authority to refer matters before the Court, as it is argued in the Referral. The limits of the authority of the President to refer questions/ matters to the Court* [...] *should be assessed based on the purpose of constitutional action initiated by the President."*

53. According to Pallaska *Amicus Curiae,* Article 84, paragraph 9 of the Constitution grants the President the possibility to raise constitutional issues of two types, namely *" (i) constitutional action aimed at challenging a particular legal and/ or an actual act in terms of its compatibility with the Constitution; and (ii) constitutional action aimed at clarifying or seeking an interpretation of a particular constitutional provision that is closely associated to the exercise of the constitutionally mandated competences of the President."*

54. Following this distinction, Pallaska *Amicus Curiae* presents arguments, which according to him make Article 113, paragraph 2 and 3 of the Constitution applicable in the present referral, but not Article 112 of the Constitution.

55. Pallaska *Amicus Curiae* is of the opinion that *"...in order to submit a referral under Article 113, paragraphs 2 and/or 3, of the Constitution, the President is only required to pose a question on whether the challenged act is compatible with the Constitution. Indeed, according to Article 29 of the Law on the Constitutional Court, a referral submitted under Article 113, paragraph 2, of the Constitution needs only to (i) specify whether the question on compatibility applies to the act as a whole or a part of it; and (ii) to identify the provisions of the Constitution with which the challenged act may be incompatible. Consequently, it can be deduced that the President - even when acting pursuant to Article 113, paragraph 2 and/or 3, of the Constitution - can challenge an act solely by posing a question on the compatibility of the challenged act with the Constitution and by identifying the constitutional provisions with which the challenged act may not be compatible with."*

56. On the other hand, according to Pallaska *Amicus Curiae,* Article 112 of the Constitution becomes relevant when the President raises

constitutional questions before the Court *"...with the aim of ensuring that the actions of the President, in the exercise of [his/her] constitutionally mandated powers, are compatible, and in line, with the Constitution. By seeking guidance on "constitutional questions" under the aforementioned constitutional provisions, the President is not only able to prevent any violation of the Constitution during the exercise of [his/her] powers but also to demonstrate that any unwitting violation of the Constitution does not amount to a "serious violation," within the meaning of Article 113, paragraph 6, of the Constitution."*

57. Further, Pallaska *Amicus Curiae* defines the constitutional question in the present referral, by referring to the Court's case law, more precisely Judgment in KO103/14, *"... in which the Court assessed the compatibility of Article 84, paragraph 14, with Article 95 of the Constitution. In this case, the Court held that since the referral has raised constitutional questions with respect to two particular constitutional provisions (Article 84, paragraph 14, and Article 95 of the Constitution) the questions submitted by the President "are of constitutional nature".*

58. However, Pallaska *Amicus Curiae* states that Case KO103/14 is only taken as an example, where the test for the definition of the constitutional question has been established, but *"...cannot serve as a precedent for the Referral as, in the present case, the President has not sought an "interpretation" of the Constitution, as it did in Referral KO 103/ 14, but has requested an assessment of the compatibility of the General Principles, as a specific and standalone act, with the Constitution. On the basis of the above, it can be deduced that the Referral cannot be declared as admissible pursuant to Article 84, paragraph 9, in relation to Article 82 and Article 112 of the Constitution."*

59. Further, Pallaska *Amicus Curiae* elaborates on the merits of the referral by underlining that *"the right of the municipalities to have inter-municipal and cross-border cooperation, in accordance with the law, is guaranteed under Article 124, paragraph 4, of the Constitution. Having said this, such an inter-municipal and cross-border cooperation is based on the conmlon interests of the municipalities that are related to their powers mandated by Constitution and the law."*

60. In addition, he also refers to the provisions of the European Charter of Local Self-Government, more precisely its Article 10, paragraph 1, which stipulates that "*[l]ocal authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of*

the law, to form consortia with other local authorities in order to carry out tasks of common interest".

61. However, Pallaska *Amicus Curiae*, is of the opinion that the category of ethnicity, as it is evident from the very title of the General Principles, cannot be within municipalities' common interest *"... due to the fact that "ethnicity" does not fall within the realm of municipal power or function on the basis of which municipalities can seek inter-municipal and cross-border cooperation according to Article 124, paragraph 4, of the Constitution, and Article 10, paragraph 1, of the European Charter of Local Self-Government".* Therefore, according to Pallaska *Amicus Curiae, "... the use of the phrase "Serbian majority municipalities" in the title and the text of the General Principles should be declared as incompatible with Article 3, paragraph 1, and Article 124, paragraph 4, of the Constitution as well as Article 10, paragraph 1, of the European Charter of Local Self-Government".*

62. Notwithstanding the above, Pallaska *Amicus Curiae* maintains that the Constitution and the relevant applicable law, namely the Law on Local Self-Government *"... offers sufficient basis for the establishment of an association of municipalities that have a set of competences that distinguish them from the other municipalities"*, by providing an analysis how specific legal provisions provide possibilities of establishing and regulating such an association.

63. Further, Pallaska *Amicus Curiae* provides an analysis of "*Executive character of the powers and competences of the Association/Community",* by raising potential issues which may be faced in the implementation of the General Principles.

64. In this respect, it is stated in his brief that *"The Association/ Community's delivery of public functions and services, as provided for under Article 4 of the General Principles, represents a direct violation of Article 123 of the Constitution, which provides that '(2) Local self-government is exercised by representative bodies elected through general, equal, free, direct and secret ballot elections'."*

65. In addition, Pallaska *Amicus Curiae* states that *"Article 4 of the General Principles is incompatible with Article 124, paragraph 1, of the Constitution as it establishes the Association/Community as an additional unit of local self-government, above the municipalities. It should also be noted that the establishment of the complaints office, under Article 7, paragraph (f), of the General Principles exceeds the scope of review that central authorities can exercise over municipal acts, acting in their domain, provided for under Article 124, paragraph 7, of the Constitution".*

66. Another issue that Pallaska *Amicus Curiae* raises is the *"non-recognition of the right to municipalities to leave the Association/Community"*, which according to him it*"… represent a violation of Article 44 of the Constitution, as it is implemented by Article 3, paragraph 2, of the Law on the Freedom of Association. Furthermore, the failure of the General Principles to explicitly give its members the right to leave the Association/ Community suggests that this organization is a mandatory executive body and, as such, represents an additional layer of self-government in Kosovo, above the municipalities"*.

67. In addition, Pallaska *Amicus Curiae* is of the opinion that the delegation of additional functions to the Association/Community by the central authorities, as stipulated in Article 5 of the General Principles, which provides that the Association/Community will *"exercise other additional competences as may be delegated by the central authorities"*, is in violation of Articles 123 and 124 of the Constitution.

68. Furthermore, Pallaska *Amicus Curiae* considers that granting the right to undertake legal initiative and have standing before the Court, as it is foreseen in Section 10 and Section 11 of the General Principles, respectively, raises constitutional issues. In his opinion *"… as it can be attested, Article 79 of the Constitution does not recognize the Association/ Community as one of the parties that can undertake a legislative initiative. Consequently, it can be concluded that Section 10 of the General Principles does not only represent a direct violation of Article 79 of the Constitution but its application would, in effect, require an amendment to the Constitution"*. While, with regard to standing before the Court, he states that *"… the Constitution, in general, and Article 113 of the Constitution, specifically, does not recognize the Association/Community as an authorized party to bring constitutional/legal action before the Court. Consequently, it is clear that Section 11 of the General Principles is not only incompatible with the Constitution but also its application would, in effect, require an amendment to the Constitution"*.

69. Pallaska *Amicus Curiae* in his brief also states that the possibility for the Association/Community to own companies and provide local services may have constitutional and legal implications. Namely, in his opinion *"… the fact that the General Principles seek to transfer or share certain core municipal functions of the municipalities with the Association/ Community proves – better than any other argument – that the Association/ Community represents an organization with executive powers that is an additional unit of local self-government,*

above the municipalities. Consequently, it can be concluded that the Association/Community will diminish the constitutionally mandated powers and competences of the municipalities that will join it. As such, the provisions of the General Principles specified above, are not compatible with, and represent a violation of, Articles 44, 79, 113, 123 and 124 of the Constitution".

70. In addition, Pallaska *Amicus Curiae* provides an analysis on the "*Scope of work of the governing instruments of the Association of municipalities under the Kosovo law"* concentrating on the Law of Local Self-Government and its provision regulating the competences and functions that they provide for such associations and comparing the General Principles of the Association/Municipality with the objectives and competences of the existing Association of Kosovo Municipalities.

71. In this respect, Pallaska *Amicus Curiae* is of the opinion that *"... the Association/Community that is envisaged to be established under the General Principles is an additional unit of self-government, which is empowered not only to exercise supervision over the municipalities in the exercise of their constitutionally mandated powers but may also offer public functions and services to the residents of the municipalities that have joined it. Consequently, it is clear that the Article 4 and Article 7, paragraph (f), of the Association are not compatible with Articles 123 and 124 of the Constitution".*

72. In the following part of his brief, Pallaska *Amicus Curiae* provides an analysis of the status of the employees of the Association/Community, where he considers that *"The executive character of the Association is also confirmed by the fact that Article 6, paragraph (e), of the General Principles provides that the employment status of the personnel of the Association/ Community shall be in accordance with, inter alia, the Law on Civil Service. In this respect, it should be noted that the "civil service" is a constitutional category mandated by Article 101 of the Constitution... This means that, according to Article 101 of the Constitution, "civil service" is an executive/administrative arm of the Government of the Republic of Kosovo through which the Government exercises "the executive power in compliance with the Constitution and the law," as it is provided under Article 92, paragraph 2, of the Constitution."*

73. Consequently, according to Pallaska *Amicus Curiae*, granting that status of civil servants to the employees of the Association/Community is in contradiction with 101 of the Constitution and it violates relevant legal provisions of the Law on Civil Service.

74. Further, Pallaska *Amicus Curiae* analyses the relations of the Association/Community with the central authorities, focusing on Section 8 of the General Principles, where is provided that "*the Association/Community will work with central authorities on the basis of mutual cooperation and information sharing*".

75. In this respect, Pallaska *Amicus Curiae* is of the opinion that *"The wording of the aforementioned provision of the General Principles suggests that the Association/ Community has horizontal relations with the central authorities, including the Government of Kosovo. As a result of this, the wording used under Article 8 of the General Principles leaves the impression that the Association/Community is an organization that is equal in standing to the central authorities of Kosovo."* As such, he affirms that *"This form of representation of a community is not foreseen under the Constitution. Consequently, Sections 8 and 9 of the General Principles are not compatible with the Constitution"*.

76. Finally, Pallaska *Amicus Curiae* includes in his brief his remarks with regard to the establishing of the Association/Community, where, according to him, the General/Principles foresee a procedure of constitutional assessment before the Constitutional Court, which is similar to the procedure of preventive control of the constitutional amendments.

77. Pallaska *Amicus Curiae* concludes his brief by raising concerns with regards to the ambiguous language which is used in the text of the General Principles, especially with regard to Albanian and Serbian language versions of the word *"constituent assembly"*, which according to him, are not reconciled with each other and as such are inaccurate and misleading.

Summary of facts

78. On 19 April 2013 the Prime Ministers of the Republic of Kosovo and the Republic of Serbia signed the "First Agreement on the Principles that Regulate the Normalization of the Relations between the Republic of Kosovo and the Republic of Serbia" (hereinafter: the "First Agreement").

79. On 22 April 2013, during an extra-ordinary session requested by the Prime Minister, the Assembly approved Resolution no. 04-R-10, on Giving Consent to the Signing of the First Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia (Published on the Webpage of the Assembly). According to this Resolution:

c. *"the Assembly of Kosovo grants consent and supports signing of the first agreement for normalization of relations between the Republic of Kosovo and the Republic of Serbia [...];*
d. *[...] the Assembly of Kosovo supports the promises contained in this agreement [...]"*

80. On 28 May 2013the Government adopted Decision No. 01/132 *"Approving the Draft Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement."* Furthermore, in accordance with this Decision, the Government proceeded the Draft Law on Ratification for review and adoption by the Assembly.

81. On 27 June 2013 the Assembly held a plenary session where Law No. 04/L-199, on Ratification was voted upon and adopted. Of the Deputies present, 84 voted in favour, 3 were against and one Deputy abstained. On the same day the Law on Ratification was sent for promulgation to the President of the Republic of Kosovo.

82. On 12 September 2013 by Decree No. DL-050-2013, the President of the Republic of Kosovo promulgated the Law on Ratification.

83. The First Agreement contained, *inter alia*, the following provisions:

7. *"There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.*

8. *The Association/Community will be created by Statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).*

9. *The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities, e.g. President, Vice-President, Assembly, Council.*

10. *In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Association/Community collectively. The Association/Community will have full*

overview of the areas of economic development, education, health, urban and rural planning.

11. *The Association/Community will exercise other additional competences as may be delegated by the central authorities.*

12. *The Association/Community shall have a representative role to the central authorities and will have a seat in the communities consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged."*

84. In the Referral is stated that on 25 August 2015 the Prime Minister of the Republic of Kosovo agreed on the document entitled *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements".*

Applicant's request

85. The Applicant requests the Court to respond to the following question:

> *"Taking into consideration that the Principles of Association regulate the creation and functioning of the Association of the municipalities with Serb majority in Kosovo, are these principles and elements compatible with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo?"*

86. The Applicant argues that,

> *"The Principles of Association, in the format of a legal act approved by the Prime Minister of the Republic of Kosovo, handles issues which fall under the scope of issues which touch upon the spirit of the Constitution and issues specified in Article 3.1, Chapters II and III, as in the understanding of the notion of the multi-ethnic nature, of basic rights and freedoms, rights of communities and their members, as well as the nature of institutions stemming from the Constitution. Therefore, implementation of the obligations of the Principles of Association produces a legal effect in the constitutional system of the Republic of Kosovo. As per the commitment of the Principles of Association, it is clear that this issue constitutes the ratione materiae, as the issue raised falls under the scope of constitutional issues, also as reflected in [Judgments] taken by the Constitutional Court in cases No. KO80/10 and No. KO103/14. Characteristic of the criteria of "constitutional issues", already determined in the above-*

mentioned cases, is that the issue falls under the scope of activity of the Constitution of the Republic of Kosovo, both in letter and in spirit.

The Principles of Association is a document signed by the Prime Minister and represents the dedication of the Government to create a new legal entity which produces legal effects in the constitutional order of the Republic of Kosovo. The Principles of Association stem from the "First International Agreement on Principles which Regulate the Normalization of Relations [...]", ratified by the [Assembly] of the Republic of Kosovo by Law No. 04/L-199, on Ratification of the First International Agreement which Regulates the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia [...].

[...]

From the constitutional authority of the [Applicant] as head of state derives the right to refer constitutional issues in accordance with Article 113, paragraphs 2 and 3 (jurisdiction and authorized parties) of the Constitution. The reason for this lies in the fact that there are legal acts and conditions which are considered "constitutional issues" but cannot be formally submitted to the Constitutional Court, as they are not in the format of a law, decree, regulation or a municipal statute (as per Article 113, paragraph 2 of the Constitution). Such is also the case with the "Principles of Association", which is not an international agreement but an applicable legislation deriving from an international agreement. The "First International Agreement" is not executable per se and requires additional legislation for [its] implementation.

[...]

The Principles of Association is an intermediary legal act, which stems from the "First International Agreement", adds additional elements in the process of creating the legal entity itself (the Association/Community), and precedes the founding act (Decree of the Government of Kosovo on Establishment, as per Article 2 of the Principles of Association), hence having a conditioning effect on the founding act. Taking into consideration these facts, the need arises for a constitutional assessment of the Principles of Association itself and its compliance with the Constitution."

Admissibility of the Referral

87. In order for the Court to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure, have been fulfilled.

88. Article 84(9) of the Constitution [Competencies of the President] provides that:

> *"The President of the Republic of Kosovo:*
>
> *(9) may refer constitutional questions to the Constitutional Court;"*

89. In general, the authority of the President of the Republic under Article 84 (9) of the Constitution to refer constitutional questions to the Court must be understood in conjunction with the provisions of the Constitution regarding the jurisdiction of the Court contained in Article 113 [Jurisdiction and Authorized Parties] of the Constitution.

90. In this respect, Article 113.2 of the Constitution provides that,

> *"[...] the President of the Republic of Kosovo [...] [is] authorized to refer the following matters to the Constitutional Court:*
>
> *(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;*
>
> *(2) the compatibility with the Constitution of municipal statutes."*

91. In the present Referral, the Applicant requests the Court to assess whether the principles and elements contained in the document entitled *"Association/Community of Serb majority municipalities in Kosovo – general principles/main elements"* (the Principles) are compatible with the Constitution.

92. The Applicant claims that this document is either *"a legal act approved by the Prime Minister of Kosovo"* or, alternatively, is *"a document signed by the Prime Minister"*.

93. The Court notes that the document was drafted in three languages of which the English-language version has been initialed.

94. In response to the Court's request, the Prime Minister stated that the English-language version of the document was "signed", but that the Prime Minister considers that the Albanian-language version is the original and authentic version of the document.

95. The Court notes that this document (hereinafter: the Principles) is neither a law, nor a decree of the President or Prime Minister, nor a regulation of the Government, within the meaning of Article 113.2, under (1) of the Constitution. Furthermore, it is also not a municipal statute, within the meaning of Article 113.2, under (2) of the Constitution.

96. Therefore the Principles do not come within the scope of the jurisdiction of the Constitutional Court as provided by Article 113.2 of the Constitution. Accordingly, the Court cannot review the Principles as a legal act enlisted under Article 113.2 of the Constitution.

97. In this regard, the Court recalls that it has case law where it has been called upon by the President of the Republic to interpret the meaning of specific provisions of the Constitution. This was done to provide guidance to the President in the execution of her tasks (see, e.g., Case no. KO103/14, *the President of the Republic of Kosovo: Concerning the assessment of the compatibility of Article 84(14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo*, Judgment of 1 July 2014).

98. The Court notes that the President of the Republic submitted a Referral to the Court seeking an interpretation of the meaning of provisions of the Constitution. The Court has determined that such questions are of a constitutional nature and come within the scope of constitutional questions, within the meaning of Article 84(9) of the Constitution (see, Judgment in the above Case KO103/14, paragraphs 26 and 27).

99. In such cases, the jurisdiction of the Court stems from Article 112 of the Constitution. Article 112, paragraph 1, provides that,

> *"1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution."*

100. To the extent that the scope of the Applicant's present Referral encompasses a request for the Court to interpret specific provisions of the Constitution in assessing the constitutionality or the compatibility of the Principles, the Court has jurisdiction to deal with the referral.

Thus, the Court is the final authority to provide an interpretation within the meaning of Article 112.1 of the Constitution.

101. When an issue is raised by an authorized party who considers that it constitutes a "constitutional question" this is a matter for the Court to decide. The Court itself decides whether the raised issue is a "constitutional question" and decides this on a case-by-case basis. Not every issue claiming to raise a constitutional question may be such a matter *per se*.

102. In this respect, the Court recalls its jurisprudence when it was asked to provide an interpretation based on Article 112.1 of the Constitution. Namely, in Referral KO97/10 the Court considered a question raised under Article 84 (9) which required an interpretation based on Article 112.1 of possible actions of the Acting President of the Republic.

103. In the above-mentioned case, the Court held that *"In accordance with Article 112.1 of the Constitution, "the Constitutional Court is the final authority for the interpretation of the Constitution" and because of that there is no other body from whom the Applicant may seek an answer to the constitutional questions. The Court is of the opinion that the questions are "constitutional questions" that are contemplated by Article 84 (9) and the questions raised are fit to be addressed by the Court."* (See Case No. KO 97/10, *In the matter of the Referral submitted by Acting President of the Republic of Kosovo, Dr. Jakup Krasniqi, concerning the holding of the office of Acting President and at the same time the position of Secretary General of the Democratic Party of Kosovo*, Judgment, 22 December 2010, §14).

104. The Court considers that the questions raised in the present Referral are of utmost importance and relevant to the constitutional order of Kosovo. Moreover, there is no other institution in the Republic of Kosovo whereto the Applicant could address them. Consequently, the Court concludes that Article 112.1 provides the appropriate constitutional basis for the assessment of the Principles for compatibility with relevant constitutional provisions.

Scope of the referral

105. The Applicant argues, *inter alia*, that the "Principles" constitute an intermediary document for the implementation of the provisions of the First Agreement. The Applicant claims that the Principles will have legal effects in the constitutional order of the Republic of Kosovo through the subsequent legal acts that are adopted on the basis of the Principles. Furthermore, the Applicant submits that these legal effects

will encompass the nature of the institutions stemming from the Constitution.

106. The Court recalls its decision in Case no. KO98/11 (*The Government of the Republic of Kosovo, Concerning the immunities of the Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and the Members of the Government of the Republic of Kosovo*, Judgment of 20 September 2011), paragraphs 44 and 46, where the Court found that,

> *"44. The Republic of Kosovo is defined by the Constitution as a democratic Republic based on the separation of powers and the checks and balances among them. The separation of powers is one of the bases that guarantees the democratic functioning of a state. [...]"*
>
> *"46. The questions [raised in the referral] are of a constitutional nature as they are linked to the form of governance of the state. They concern the mechanisms of the exercise of the division of power in the Republic of Kosovo."*

107. In an analogous fashion, the Court considers that the legal effects on the institutions, envisaged by the First Agreement, relate to the form of governance of the state, *inter alia*, in its division into central and local self-government. Moreover, the legal consequences related to the implementation of this part of the First Agreement have an impact on the constitutional order of the Republic of Kosovo. As such, the manner in which the First Agreement is implemented has implications for the democratic functioning of the state.

108. Consequently, the Court finds that the questions submitted by the Applicant are of a constitutional nature. They aim at ensuring that the establishment of the Association/Community of Serb majority municipalities, is consistent with the letter and spirit of the Constitution.

109. Therefore, the Court finds that the Applicant is an authorized party to submit the referral within the meaning of Article 84 (9) of the Constitution. Furthermore, the Court finds that it has jurisdiction to consider the referral as the final authority for the interpretation of the Constitution under article 112.1 of the Constitution.

110. Based on the above, the Court considers that there are no grounds to declare the referral inadmissible.

Merits of the referral

111. The Court first will take into account which is the legal basis for the elaboration of the Principles and the establishment of the Association/Community.

112. The Court reiterates that the First Agreement in point 1 provides for the establishment of an Association/Community, namely "*There will be an Association/Community of Serb majority municipalities in Kosovo* ". Further the Court recalls Article 19 [Applicability of International Law], paragraph 1 of the Constitution which states that:

> *"InternationalagreementsratifiedbytheRepublicofKosovobecomepartoftheinternallegalsystemaftertheirpublicationintheOfficialGazetteoftheRepublicofKosovo [...]"*

113. The First Agreement was ratified as an international agreement on 27 June 2013 by the Republic of Kosovo through its Assembly and published in the Official Gazette of the Republic of Kosovo. Thus, this international agreement becoming part of the internal legal system required for its implementation the establishment of the above Association/Community. Therefore, the establishment of the Association/Community is in compliance with the constitutional requirement and thus is part of constitutional order of the Republic of Kosovo. Moreover, point 2 of the First Agreement foresees the Association to "*be created by Statute*".

114. The Referral is about the Principles upon which the Association/Community will be established as foreseen by point 1 of the First Agreement (see Principle #1 of the Principles).

115. According to the scope of the Referral, the question to be answered by the Court is whether the Principles are in compliance with the spirit of the Constitution and its Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members]. The Court notes that the Principles foreseen for the establishment of the Association/Community are related to and intertwined with other constitutional provisions which the Court will take into account in its assessment.

116. The Court will review the Principles chapter by chapter for compliance of each chapter with the Constitution and of specific provisions of each chapter that are related to constitutional provisions. In this way the assessment of the Principles will be done in accordance with

constitutional standards. The Court's reasoning and the conclusions shall serve as a basis for the elaboration of the legal act and the Statute.

117. The Court's understanding is that *"[...] the Kosovo Government will adopt a decree directly applicable, which will be reviewed by the Constitutional Court"* (see Principle #2). Hereafter, following Principle #21, the Statute will be prepared by a different body but will be endorsed by a legal act of the Government. Moreover, any amendment to the Statute will be endorsed by a legal act of the Government and will be reviewed by the Constitutional Court. Therefore, the Court concludes that the legal act of the Government may incorporate the Statute and this overall act will be submitted for review by the Court, i.e. the legal act and the Statute (hereinafter: the legal act and the Statute).

118. The Court notes that the Statute that will be elaborated shall be based on the framework laid out in the chapters of the Principles.

119. The Constitutional Court reiterates that it is the authority that interprets the Constitution and reviews the compliance of laws with the Constitution when seized. The Court is not a legislative body, nor a legal norms drafting body and in this case it is for the Government while preparing the legal act for the implementation of the First Agreement related to the Association/Community to make it in compliance with the letter and spirit of the Constitution *inter alia*, the respective constitutional provisions.

Legal framework

120. The chapter on Legal framework provides that,

> *"(1) The Association/Community of Serb majority municipalities in Kosovo is established as an Association/Community of municipalities as foreseen by the First Agreement, the Law on Ratification of the First Agreement and Kosovo law.*
>
> *(2) On the basis of the First Agreement which recognizes its distinct character, the Kosovo Government will adopt a decree directly applicable, which will be reviewed by the Constitutional Court. The Community/Association [sic] will be a legal entity defined by its Statute, which will comprise at least the elements set out below.*

(3) The Statute will be adopted by a constituent assembly composed of the voted members of the assemblies of the participating municipalities."

121. Regarding the chapter on Legal framework of the Principles, the Court notes that these refer to the legal sources of the Association/Community, and describe that the establishment of the Association/Community will be performed through a Decree of the Kosovo Government which is to be reviewed by the Court.

122. Regarding the adoption of further legal acts by the Government, the Court recalls Article 93 [Competencies of the Government] of the Constitution, which provides, *inter alia*, that,

"The Government has the following competencies:

[...]

(4) makes decisions and issues legal acts or regulations necessary for the implementation of laws;

[...]"

123. Regarding the review of legal acts of the Government of Kosovo for compliance with the Constitution, the Court recalls Article 113.2 [Jurisdiction and Authorized Parties] of the Constitution, which provides that,

"2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime minister, and of regulations of the Government;

[...]"

124. The Court finds that when the chapter on Legal framework of the Principles is elaborated into a legal act of the Government of Kosovo, that legal act must be in compliance with the competencies of the Government as defined in Article 93 of the Constitution. Furthermore, this legal act is foreseen to be directly applicable and is to be submitted to the Court for a review of its constitutionality. Therefore, it must be in compliance with the jurisdiction of the Court as defined in Article 113.2 of the Constitution.

125. The Court notes further that the Association/Community will be defined by its Statute. This Statute will be adopted by a constituent assembly composed of the elected members of the municipal assemblies of the participating Serb majority municipalities. Furthermore, under the general and final provisions of the Principles, Principle #21, the procedures towards the drafting and adoption of this Statute are set out, including the relationship between the Statute and the legal act to be adopted by the Government of Kosovo.

126. It stems from the Principles that the legal act and the Statute will define the objectives, organizational structure, legal capacity, budget and support, and relations with central authorities of the Association/Community.

127. The Court recalls that Article 12 of the Constitution is the foundation of local self-governance in the Republic of Kosovo, which provides that:

> *"1. Municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo.*
>
> 2. *Theorganizationandpowersofunitsoflocalself-governmentareprovidedbylaw."*

128. Regarding the establishment of associations by municipalities, the Court recalls Article 21.4 [General Principles] of Chapter II [Fundamental Rights and Freedoms] of the Constitution, which provides that,

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

129. The Court also recalls Article 44 [Freedom of Association] of the Constitution, which provides, *inter alia*, that,

> *"1. The freedom of association is guaranteed. The freedom of association includes the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization.*
>
> *[...]*
>
> *3. Organizations or activities that infringe on the constitutional order, violate human rights and freedoms or encourage racial,*

national, ethnic or religious hatred may be prohibited by a decision of a competent court."

130. The Court further recalls that the Association/Community is foreseen by the First Agreement, *inter alia,* point 3 provides that *"The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities, e.g. President, vice President, Assembly, Council."*

131. That implies that Article 12, Article 21.4 and Article 44, as well as Article 124.4 of the Constitution shall be taken into consideration.

132. The Court notes that the Association/Community as foreseen by the First Agreement and the Principles shall be an organization within the meaning of Article 44 of the Constitution.

133. The Court considers that the Statute shall be adopted by a constituent assembly that is a founding or inaugural meeting composed of representatives of its members as foreseen in the Principles.

134. The Court also notes that the Association/Community is foreseen to be composed of participating municipalities for the purpose of advancing certain objectives.

135. In this respect, the Court recalls Article 124.4 [Local Self-Government Organization and Operation] of the Constitution, which provides that,

"4. Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law."

136. Based on the above, the Court considers that the Principles laid down in the chapter on Legal framework do not meet entirely the constitutional standards. Considering that the nature of the Association/Community will be established in this part, the legal act and the Statute must be in compliance with Articles 12, 21.4, 44 as well as Article 124.4 of the Constitution.

Objectives

137. The chapter on Objectives provides that,

"(4) In accordance with the First Agreement, the Association/Community will have as its main objectives in delivering public functions and services to:

a. Strengthen local democracy;

b. Exercise full overview to develop local economy;

c. Exercise full over view in the area of education;

d. Exercise full overview to improve local primary and secondary health and social care;

e. Exercise full overview to coordinate urban and rural planning;

f. [there is no item f]

g. Adopt measures to improve local living conditions for returnees in Kosovo;

h. Conduct, coordinate and facilitate research and development activities;

i. Promote, disseminate and advocate issues of common interest of its members and represent them, including to the central authorities;

j. Provide services to its members in accordance with Kosovo law;

k. Assess the delivery of public services to its members and their residents as to support the Community/Association [sic] in forming positions of common interests for the participation to the work of the central authorities;

l. Conduct monitoring as required for the implementation of its objectives;

m. Establish relations and enter into cooperation arrangements with other associations of municipalities, domestic and international.

(5) The Community/Association [sic] will exercise other additional competences as may be delegated by the central authorities."

138. The Court notes that these objectives raise issues under Article 12 [Local Government] and Chapter X [Local Government and Territorial Organization] of the Constitution.

139. Chapter X of the Constitution provides that,

"Chapter X Local Government and Territorial Organization

Article 123 [General Principles]

1. The right to local self-government is guaranteed and is regulated by law.

2. Local self-government is exercised by representative bodies elected through general, equal, free, direct and secret ballot elections.

3. The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter of Local Self-Government to the same extent as that required of a signatory state.

4. Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.

Article 124 [Local Self-Government Organization and Operation]

1. The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.

2. Establishment of municipalities, municipal boundaries, competencies and method of organization and operation shall be regulated by law.

3. Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates competencies shall cover the expenditures incurred for the exercise of delegation.

4. Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law.

5. Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.

6. Municipalities are bound to respect the Constitution and laws and to apply court decisions.

7. The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law."

140. The Court considers that, based on the Objectives defined by the Principles, the establishment of the Association/Community comes within the scope of inter-municipal cooperation within the meaning of Articles 12 and 124.4 of the Constitution. These provisions of the Constitution require that any inter-municipal cooperation must be in accordance with the law.

141. The Court notes that when the Principles are elaborated into a legal act and the Statute, they shall respect the provisions of the legislation of vital interest within the meaning of Article 81 of the Constitution.

142. The Court notes that, the objectives of the Association/Community are related to *"delivering public functions and services"* and that several of the enumerated objectives provide that the Association/Community shall *"exercise full overview",* specifically in the areas of the development of local economy, education, local primary and secondary health care and social care, and urban and rural planning.

143. The Court is concerned that the meaning of the English term "exercise full overview" is ambiguous and does not conform to the terms used in either the Albanian-language text of the Principles nor the Serbian-language text of the Principles. The Court notes that the Albanian term used in the Principles is "ushtrimin e vështrimit të plotë", which translates approximately into English as "exercise of full view", which is similar to simply observing. The Court notes further that the Serbian term used in the Principles is "obavljanje potpunog pregleda", which translates approximately into English as "conduct a full review", which is similar to conducting an audit.

144. The Court notes that the First Agreement in point 4 uses the language *"The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning"* i.e. "being informed". The wording to be used in the elaborated legal

act and the Statute has to be in compliance with the wording of the First Agreement, point 4.

145. The Prime Minister of the Republic of Kosovo, in his letter of 19 November 2015, stated that, although the signed version of the Principles was the English-language version, nevertheless, "*For the delegation of the Republic of Kosovo, as original and authentic language version during the entire process of negotiations, was considered and accepted the version of principles translated into Albanian language, as the first official language in the Republic of Kosovo.*"

146. Regarding the quality of the language to be used when drafting legal acts, the Court recalls the case-law of the European Court of Human Rights. In its Judgment in the case Sunday Times v. United Kingdom (App. No. 6538/74, ECtHR Judgment of 26 April 1979, para. 49) the European Court of Human Rights stated, *inter alia,* that,

> *"49. In the Court's opinion, the following are two of the requirements that flow from the expression "prescribed by law". Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. [...]."*

147. This Judgment of the European Court of Human Rights specifies that the law must be sufficiently accessible, precise and foreseeable in its consequences for it to qualify as "law". Therefore, the Court finds that when elaborating the First Agreement and the chapter on Objectives of the Principles into a legal act and the Statute any ambiguities in the definition of the objectives of the organization foreseen by the Principles shall be clarified. It also has to be ensured that each official language version of the legal act and the Statute is reconciled with the other language versions such that their meanings are identical, to the greatest extent possible.

148. Moreover, the Court finds that when the objectives of the Association/Community are elaborated into a legal act and the Statute, they shall take into account Articles 12, 81, 123 and 124 of the Constitution regarding the status, objectives and competencies of municipalities. In particular, the legal act and the Statute of the Association/Community shall not replace or undermine the status of

the participating municipalities as the basic units of democratic local self-government within the meaning of Article 12 and Chapter X of the Constitution.

149. Based on the above, the Court considers that the Principles laid down in the chapter on Objectives do not meet entirely the constitutional standards. The Court considers that the objectives of the Association/Community as defined in the legal act and the Statute shall guarantee constitutional standards for local self-government related to the responsibility of the participating municipalities and to their relations with central authorities, within the meaning of Articles 124.6 and 124.7 of the Constitution. The objectives shall secure the responsibility of the participating municipalities to respect the Constitution and the laws and shall not circumvent or avoid the administrative review by central authorities.

Organisational structure

150. The chapter on Organisational structure provides that,

"(6) The Association/Community will have the following organs:

a. An Assembly as a supreme body composed of representatives appointed by each assembly of the participating municipalities, among their elected members. The Assembly will have the right to adopt amendments to the Statute, rules of procedure and all necessary regulations and administrative decisions as per its Statute and related objectives.

All amendments to the Statute, rules of procedure and all necessary regulations and decisions adopted by the Assembly will be applicable to its members unless one of its members formally expresses a different decision.

b. A President, who will represent the Community/Association, [sic] including before the central authorities and outside Kosovo. The President will be assisted by a Vice-President. The President and the Vice-President will be elected by the Assembly from among the members of the participating municipalities' assemblies and their mayors.

c. A Council composed of a maximum of 30 members among the residents of the participating municipalities, including all mayors of the participating municipalities; the Council is an advisory body which provides guidance to the work of the Association/Community.

d. A Board composed of 7 members voted by the Assembly from among the mayors and residents of the participating municipalities, the exact composition to be defined in the Statute, with the right to take the necessary decisions for the daily management of the Community/Association [sic]. The members of the Board will be supported in their work by professional collegia composed of experts, divided into and covering those areas falling under the objectives and tasks of the Association/Community. The Statute will define the number of professional collegia and their assignment to the members of the Board.

e. An administration, headed by a Chief of Administration appointed by and reporting to the Board, supporting the work of the Community/Association, [sic] in particular the Board and the President. The staff of the administration will benefit from an employment status, in accordance with Kosovo law, including the Law on Labour and the Law on Civil Service, enabling them to perform their administrative duties. The members of the Association/Community may decide to use a number of employees to support the Community/Association in the execution of its objectives.

f. A complaints office with a mandate to examine complaints in relation to its objectives.

7. The seat of the Community/Association [sic] will be determined in the Statute."

151. The Principles regarding the Organisational structure of the Association/Community are to be considered under Article 3 [Equality Before the Law], Article 7 [Values], Chapter III [Rights of Communities and Their Members] Article 57 [General Principles], Paragraph 1, Article 61 [Representation in Public Institutions Employment], Article 62 [Representation in the Institutions of Local Government], and Article 101 [Civil Service] of the Constitution.

152. These Articles of the Constitution provide that,

"Article3 [Equality Before the Law]

1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.

2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by al lCommunities and their members.

Article 7 [Values]

1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.

[...]

Chapter III [Rights of Communities and Their Members]

Article57 [General Principles]

1. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution.

[...]

Article61 [Representation in Public Institutions Employment]

Communities and their members shall been titled to equitable representation in employment in public bodies and publicly owned enterprises at all levels, including in particular in the police service in are as inhabited by the respective Community, while respecting the rules concerning competence and integrity that govern public administration.

Article62 [Representation in the Institutions of Local Government]

1. In municipalities where at least ten per cent (10%) of the residents belong to Communities not in the majority in those municipalities, apost of Vice President of the Municipal Assembly

for Communities shall be reserved for a representative of these communities.

2. The position of Vice President shall be held by the non-majority candidate who received the most votes on the open list of candidates for election to the Municipal Assembly.

3. The Vice President for Communities shall promote inter-Community dialogue and serve as formal focal point for addressing non-majority Communities 'concerns and interests in meetings of the Assembly and its work. The Vice President shall also be responsible for reviewing claims by Communities or their members that the acts or decisions of the Municipal Assembly violate their constitutionally guaranteed rights. The Vice President shall refer such matters to the Municipal Assembly for its reconsideration of the act or decision.

4. In the event the Municipal Assembly chooses not to reconsider its act or decision, or the Vice President deems the result, upon reconsideration, to still present a violation of a constitutionally guaranteed right, the Vice President may submit the matter directly to the Constitutional Court, which may decide whether or not to accept the matter for review.
5. In these municipalities, representation for non-majority Communities in the Republic of Kosovo in the municipal executive body is guaranteed.

Article101 [Civil Service]

1. The composition of the civil service shall reflect the diversity of the people of Kosovo and take in to account internationally recognized principles of gendere quality.

2. An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo."

153. The Court notes that the Principles regarding the organizational structure of the Association/Community raise concerns regarding respect for the diversity of communities resident within the participating municipalities, and the reflection of this diversity in the staffing and structures of the Association/Community as required by the Constitution of the Republic of Kosovo.

154. The Court recalls that the First Agreement, point 3 determines the structure of the Association to be established on the same bases as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.

155. The Court finds that when these Principles on the organizational structure of the Association/Community are elaborated into a legal act and the Statute , they shall secure respect for the diversity of communities resident in the participating municipalities, in accordance with Articles 3, 7, 57.1, 61, and 62 of the Constitution.

156. The Court notes that the Principles define that staff members in the administration of the Association/Community may benefit from an employment status based on Kosovo law, including either the Law on Labour or the Law on Civil Service.

157. The Court recalls that Article 101 [Civil Service] of the Constitution comes within Chapter VI [Government of the Republic of Kosovo]. As such, the civil service is understood to be employment within a governmental body or entity within the meaning of Chapter VI. The purpose of the civil service can be understood with reference to Article 92.2 [General Principles] of Chapter VI, namely, *"2. The Government of Kosovo exercises the executive power in compliance with the Constitution and the law."*

158. Employment in the civil service, and the special legal regime governing this employment, is a consequence of the purpose of the civil service as the administrative organ through which the Government exercises executive power. The authority of individual employees in the civil service to exercise executive functions derives from the status within the public bodies of administration established by the Government.

159. Therefore, the Court concludes that the staff of the administration of the Association/Community shall not to be considered part of the Civil Service *per se*. They may only benefit from the status of the Law on Civil Service when employed on a position in a public body of the government administration, within the meaning of Article 101 of the Constitution.

160. Based on the above, the Court considers that the Principles laid down in the chapter on Organizational structure do not meet entirely the constitutional standards.

Relations with the central authorities

161. The chapter of the Principles on relations with the central authorities provides that,

> *"(8) The Association/Community will work with the central authorities on the basis of mutual cooperation and information sharing.*
>
> *(9) The Association/Communities will promote the interests of the Kosovo Serb community in its relations with the central authorities.*
>
> *(10) The Association/Community will be entitled to propose, in accordance with Kosovo law, amendments to the legislation and other regulations relevant for the performance of its objectives.*
>
> *(11) The Association/Community will have the right to initiate or participate in proceedings before the competent courts, including to the Constitutional Court, against any acts or decisions from any institution affecting the exercise by the Association/Community of its powers in accordance with its Statute.*
>
> *(12) The Association/Community will have the right to nominate representatives in the competent organs/bodies of the central government, including the Consultative Community Council [sic]. In pursuit of the monitoring function envisaged by the First Agreement, the representative of the Association/Community will have the right to have access and information from the central authorities in accordance with Kosovo law.*
>
> *(13) Acting on behalf of the Association/Community, the four mayors of the northern municipalities will provide the Ministry of Interior a list of candidates for nomination as regional Police Commander as specified in Article 9 of the First Agreement."*

162. The Court recalls Chapter III [Rights of Communities and Their members] Article 57 [General Principles], Article 59 [Rights of Communities and their Members], under point (14), Article 60 [Consultative Council for Communities], Article 79 [Legislative Initiative], as well as Article 113 [Jurisdiction and Authorized Parties], Paragraphs 4 and 7, of the Constitution.

163. These Articles of the Constitution provide that,

> ***"Chapter III [Rights of Communities and Their Members]***

Article 57 [General Principles]

1. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II oft his Constitution.

2. Every member of a community shall have the right to freely choose to be treated or not to be treated as such and no discrimination shall result from this choice or from the exercise of the rights that are connected to that choice.

3. Members of Communities shall have the right to freely express, foster and develop their identity and community attributes.

4. The exercise of these rights shall carry with it duties and responsibilities to act in accordance with the law of the Republic of Kosovo and shal lnot violate the rights of others.

Article 59 [Rights of Communities and their Members]

1. Members of communities shall have the right, individually or in community, to:
[...]
(14) establish associations for culture, art, science and education as well as scholarly and ther associations for the expression, fostering and development of their identity.

Article60 [Consultative Council for Communities]

1. A Consultative Council for Communities acts under the authority of the President of the Republic of Kosovo in which all communities shall be represented.

2. The Consultative Council for Communities shall be composed, among others, of representative so associations of Communities.

3. The mandate of the Consultative Council for Communities shall:

> *(1) provide a mechanism for regular exchange between the Communities and the Government of Kosovo.*
>
> *(2)afford to the Communities the opportunity to comment at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives,*

and to seek to have their views inkorporated in the relevant projects and programs.
[...]

Article 79 [Legislative Initiative]

The initiative to propose laws may be taken by the President of Kosovo from his/her scope of authority, the Government, deputies of the Assembly or at least ten thousand citizens as provided by law.

Chapter VIII [Constitutional Court]

Article113 [Jurisdiction and 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."

164. The Court notes that Chapter III of the Constitution provides specific guarantees for the rights and interests of communities and, in Article 57.1, defines communities as, "*Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally prezent on the territory of the Republic of Kosovo [...].*"

165. Furthermore, Chapter III provides for specific rights to establish associations and to provide representation to central government bodies for the purposes of protecting the rights of communities. The Court notes that these rights granted to individuals and groups by virtue of belonging to a community within the meaning of Article 57.1 of the Constitution. As such, the Court finds that these rights are inalienable and inviolable attributes of these communities and their members.

166. As such, the Court finds that the Association/Community cannot be vested with full and exclusive authority to promote the interests of the Kosovo Serb community in its relations with the central authorities. It is to be noted that the Association/Community does come within the scope of the definition of a community within the meaning of article 57.1 of the Constitution.

167. The Court finds that when the Principles on relations with central authorities of the Association/Community are elaborated into a legal act and the Statute, they must ensure that the Association/Community

shall comply with the provisions of Chapter III of the Constitution and shall not replace or undermine the authority of any associations of communities established within the meaning of Articles 57, 59(14) and 60.2 of the Constitution.

168. The Court notes that Article 60.2 of the Constitution provides that, *"The Consultative Council for Communities shall be composed, among others, of representatives of associations of communities."* The Court considers that the inclusion in this provision of the words *"among others"* implies that entities or persons that do not come within the definition of "associations of communities" may also become members of the Consultative Council for Communities.

169. The Court also notes that the First Agreement in its point 6 refers to membership of the Association/Community to the Consultative Council for Communities, stating that:

> "*The Community/Association shall have a representative role to the central authorities and will have a seat in the communities consultative council for this purpose. In the pursuit of this role a monitoring role is envisaged"*

170. Therefore, the Court finds that the Association/Community may become a member of the Consultative Council for Communities under Article 60.2 of the Constitution and the First Agreement.

171. As a member of the Consultative Council for Communities the Association/Community may benefit from the right to suggest initiatives for legislation, in consultation with other communities, within the scope of the mandate of the Consultative Council for Communities within the meaning of Article 60.3 under (2) of the Constitution.

172. However, the Court recalls that under Article 79 of the Constitution, the right of legislative initiative is exclusively provided to the President of the Republic of Kosovo, the Government, the deputies of the Assembly or to at least ten thousand citizens.

173. Therefore, the Court finds that the Association/Community cannot be entitled to propose amendments to legislation and other regulations, as indicated by Principle #10 of the Principles.

174. Regarding Principle#11 of the Principles, on the rights of the Association/Community of access to the courts of the Republic of Kosovo, the Court notes that the definition of parties authorized to bring referrals to the Court is regulated by Article 113 of the

Constitution. The authority of the Association/Community to bring referrals must comply with the provisions of Article 113 of the Constitution.

175. The Court recalls Article 21.4 of the Constitution, as quoted above. Article 21.4 provides that legal persons also benefit from the protection of their fundamental rights and freedoms under Chapter II of the Constitution. The Court also recalls its case-law regarding the access to the Court for legal persons alleging a violation by a public authority of their rights and freedoms as guaranteed by the Constitution (see AAB-RIINVEST v. Government of the Republic of Kosovo, KI41/09, Resolution on Inadmissibility of 27 January 2010, paragraph 14).

176. The Court finds that the Association/Community may only initiate proceedings before the Constitutional Court where the Association/Community, as an entity having legal personality, can claim to be a victim of a violation of its fundamental rights and freedoms guaranteed by the Constitution within the meaning of Article 113.7 of the Constitution.

177. Based on the above, the Court considers that the Principles laid down in the chapter on Relations with the central authorities do not meet entirely the constitutional standards.

Legal Capacity, Budget and Support, and General and Final Provisions

178. The chapters on Legal Capacity, Budget and Support, and Final Provisions of the Principles provide that,

> ***"Legal capacity***
>
> *(14) The Association/Community will be endowed with the legal capacity necessary under Kosovo law to perform its objectives, including the right to own moveable and immoveable property, to co—own companies that provide local services within the scope of the Association/Community and to conclude contracts, including employment contracts.*
>
> *(15) On the basis of the First Agreement, the Association/Community is considered established, upon the adoption of the decree, for the purposes of its objectives.*
>
> ***Budget and support***

(16) The Association/Community will have its own budget, which will be administered in accordance with the principles of transparency and accountability, and the provisions of the law on public procurement.

Those principles will in particular apply to the channeling of funding, including under 17.d

The expenditures shall be subject to audits by the competent authorities, including by the Auditor General.

(17) The Association/Community will be funded from:

a) contributions from its members;

b) income and revenue from the services provided by the Association/ Community, its companies or drawn from its moveable or immoveable assets;

c) transfers from the central authorities;

d) contributions, grants, donations as well as financial support from other associations and organisations, domestic and international as well as from the Republic of Serbia; the Community/Association will be exempt from duties and taxes in the pursuit of its objectives, on the same basis as the participating municipalities.

General and final provisions

(18) The Association/Community will be open to any other municipality provided the members are in agreement.

(19) The Association/Community can only be dissolved by decision of its Assembly adopted by a 2/3 majority of its members.

(20) The Association/Community will be entitled to have its own official symbols (coat of arms and flag), in accordance with Kosovo law.

(21) The statute of the Association/Community will be drafted by the Management Team and presented to the High level Dialogue within 4 months from the date of agreement of these principles/elements, with facilitation if necessary, including with the Ministry of Local Government. The Statute will be endorsed by decree upon agreement in the Dialogue. Any amendments will be

presented by the Association/Community, will be endorsed by decree and will be reviewed by the Constitutional Court.

(22) Within one year of the adoption of the Statute of the Association/Community, a review of its implementation shall be conducted, including with regard to Article 5 of the First Agreement."

179. The Court notes that, in particular, the Principles regarding budget and support are to be assessed under Articles 124.5 and 137 of the Constitution. These Articles provide that,

"Article 124 [Local Self-Government Organization and Operation]

[...]

5 .Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate fund in from the central government in accordance with the law.

[...]

Article 137 [Competencies of the Auditor-General of Kosovo]

[The] Auditor-General of the Republic of Kosovo audits:

(1)the economic activity of publik institutions and ther state legal persons;

(2)theuseandsafeguardingofpublicfundsbycentralandlocalauthorities;

(3)the economic activity of publik enterprises and ther legal persons in which the State has shares or the loans, credits and liabilities of which are guaranteed by the State."

180. The Court notes that in Article 124.5 the Constitution provides for financial transfers from central government to municipalities and allocates to municipalities the right to decide on their expenditures. However, the Constitution is silent regarding transfers to other entities or bodies connected with local self-government. As such, these rights belong exclusively to the municipalities.

181. The Court finds that when elaborating the Principles on the financing, budget and expenditures of the Association/Community in a legal act and the Statute, they shall ensure that financing and expenditures of the Association/Community shall be compatible with Article 124.5 of the Constitution. Thus, the legal act and the Statute shall ensure proper financing and expenditure of the association. They also shall not replace or undermine the rights of the participating municipalities to receive and decide on the spending of municipal revenues and appropriate funding from the central government.

182. The Court notes that the Auditor-General is mandated by Article 137 of the Constitution to audit public institutions and other state legal persons, central and local authorities, and the economic activity of public enterprises and other legal persons in which the State has shares, or where the State has guaranteed the loans, credits and liabilities of such legal persons. Therefore, for the Auditor-General to be mandated to perform audits of the Association/Community, it must come within the ambit of such public institutions, authorities or enterprises within the meaning of Article 137.

183. The Court finds that the authority of the Auditor-General of the Republic of Kosovo to conduct audits of the economic activity and the use of public funds by the Association/Community is in compliance with the Constitution. This is the case when such audits come within the Auditor-General's competencies as a natural and logical extension of the auditing of the use of public funds by the participating municipalities within the meaning of Article 137 of the Constitution.

184. Regarding the chapter of the Principles on “General and final provisions’, the Court notes that these provide further procedural guidance on the elaboration and implementation of the First Agreement provisions for the establishment of the Association/Community. In particular, Principle #21 details how the Statute shall be drafted and negotiated, that the Statute shall be endorsed by a decree, and how amendments to the Statute shall be proposed, adopted by decree and be subject to review by the Court.

185. The Court recalls its findings related to the chapter of the Principles on the “Legal framework” above. The Court considers that the procedural principles contained in the chapter on “General and final provisions” must be harmonized with the procedural principles contained in the chapter on “Legal framework”.

186. Based on the above, the Court considers that the Principles laid down in the chapter on Legal Capacity, Budget and Support, and General and Final Provisions do not meet entirely the constitutional standards.

187. Furthermore, the Court reiterates its finding that when the procedural rules to amend the Statute are elaborated into a legal act and the Statute, they must be in compliance with the competencies of the Government as defined in Article 93 [Competencies of the Government], point (4) of the Constitution.

188. In order for these legal acts to be submitted for review by the Court as foreseen by the Principles, they have to come within the scope of Article 113 [Jurisdiction and Authorized Parties], paragraph 2 (1) of the Constitution.

Conclusions

189. In conclusion, the Court finds that:

1. The Applicant is an authorized party to bring this Referral to the Court within the meaning of Article 84(9) in conjunction with Article 112.1 of the Constitution:

2. The referral is admissible within the meaning of Article 84(9) in conjunction with Article 112.1 of the Constitution:

3. The First Agreement, ratified on 27 June 2013, foresees the establishment of an Association/Community of Serb majority municipalities in Kosovo. Furthermore, it provides for the establishment of this Association/Community by a Statute. In addition, it defines the structures of the Association/Community to follow the same basis as the existing statute of the Association of the Kosovo municipalities. Moreover, the participating municipalities are entitled to cooperate through the Association/Community collectively based on the European Charter for Local Self-Government and Kosovo law. The Association/Community will have full overview in the areas of different activities. In addition, the Association/Community will exercise other competencies delegated by the central authorities. Thus the establishment of the Association/Community has become part of the internal legal system.

4. The Principles as elaborated in the "*Association/Community of Serb majority municipalities in Kosovo – general principles/main elements*" are not entirely in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo.

5. The elaboration of the Principles into the legal act and the Statute shall be done in accordance with the spirit of the Constitution, Article 3 [Equality Before the Law], Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution, and in particular with Articles 3, 7, 12, Chapter II [Fundamental Rights and Freedoms] Articles 21 and 44, Chapter III [Rights of Communities and Their Members] Articles 57, 59, 60, 61 and 62, as well as with Articles 79, 81, 93, 101, 113, 123, 124 and 137 of the Constitution of the Republic of Kosovo. Thus, these Principles shall be in compliance with the constitutional standards of the Republic of Kosovo as reasoned by the Judgment of the Court.

6. The Court notes that the legal act and the Statute, as well as its amendments will be reviewed by the Constitutional Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 84(9) in conjunction with Article 112.1 of the Constitution, Article 20 of the Law, and Rule 56 (a) of the Rules of Procedure, in its session held on 21 December 2015, by majority

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that the Association/Community of the Serb majority municipalities is to be established as provided by the First Agreement, ratified by the Assembly of the Republic of Kosovo and promulgated by the President of the Republic of Kosovo;

III. TO HOLD that the Principles as elaborated in the "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" are not entirely in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo;

IV. TO HOLD that the legal act of the Government of the Republic of Kosovo and the Statute implementing the Principles in order to be in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo shall meet the constitutional standards and be in compliance particularly with Articles 3, 7, 12, Chapter II [Fundamental Rights and Freedoms] Articles 21 and 44, Chapter III [Rights of Communities and Their Members] Articles 57, 59, 60, 61 and 62, as well as with Articles 79, 81, 93, 101, 113, 123, 124 and 137 of the Constitution of the Republic of Kosovo as reasoned by the Judgment;

V. TO HOLD that the Interim Measure decided on 10 November 2015 ends upon the entry into force of this Judgment;

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	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

Dissenting Opinion of Judge Bekim Sejdiu in the case KO 130/15

I. General remarks

In the Case KO130/15, the majority of the Court has decided:

> *A) TO DECLARE the Referral admissible;*
>
> *B) TO HOLD that the Association/Community of the Serb majority municipalities is to be established as provided by the First Agreement, ratified by the Assembly of the Republic of Kosovo and promulgated by the President of the Republic of Kosovo;*
>
> *C) TO HOLD that the Principles as elaborated in the "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" are not entirely in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo;*
>
> *D) TO HOLD that the legal act of the Government of the Republic of Kosovo and the Statute implementing the Principles in order to be in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo shall meet the constitutional standards and be in compliance particularly with Articles 3, 7, 12, Chapter II [Fundamental Rights and Freedoms] Articles 21 and 44, Chapter III [Rights of Communities and Their Members] Articles 57, 59, 60, 61 and 62, as well as with Articles 79, 81, 93, 101, 113, 123, 124 and 137 of the Constitution of the Republic of Kosovo as reasoned by the Judgment;*

.....

While I share the majority's view on the admissibility of the Referral, regrettably and with all due respect for the majority of the judges, my opinion differs fundamentally on the reasoning and some of the crucial conclusions reached by the Court, pertaining to the merits of the case. Consequently, I dissent from the decision reached by the majority of the judges in the Case KO130/15. My dissent is based on two essential reasons. First, I am of the opinion that by this decision, the Constitutional Court (hereinafter "the Court") does not provide comprehensible and satisfactory

answer to the question submitted by the President through Referral KO130/15. Second, the majority made some erroneous interpretations and conclusions, which are not instrumental in preventing any further constitutional confusion on the pertinent constitutional issues presented by Referral KO 130/15. In this way this decision does not provide the necessary authoritative guidance for clarifying the constitutional controversy related to this Referral.

II. Background

This request is submitted by the President of the Republic of Kosovo (hereinafter "the President,") pursuant to Article 83 and Article 84, paragraph 9, of the Constitution of the Republic of Kosovo.

The subject matter of this request is the interpretation of compatibility of the General Principles /Main Elements of the Association of the municipalities with Serbian majority (hereinafter "Principles of Association") with the spirit of the Constitution, Article 3 (1), Chapters II and III of the Constitution of the Republic of Kosovo.

In the Referral submitted by the President it is specifically requested from the Court to address the following question:

> *"Taking into consideration that the Principles of Association regulate the creation and functioning of the Association of the municipalities with Serb majority in Kosovo, are these principles and elements compatible with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo?"*

III. Legal nature of the document entitled: "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements"

The Court avoids delineation of the legal nature of the document entitled: "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements." This hesitance inspires majority's reasoning throughout the decision, resulting thereby in a confusing and unclear interpretation of the nature of obligations arising from this "document."

In the Referral, the Applicant uses general terminology to delineate the legal nature of the document entitled: "the Principles of Association." This is indicated by the following paragraphs quoted from the Referral:

> *"The Principles of Association, in the format of a legal act approved by the Prime Minister of the Republic of Kosovo…*
>
> *[…]*
>
> *The Principles of Association is a document signed by the Prime Minister and represents the dedication of the Government to create a new legal entity which produces legal effects in the constitutional order of the Republic of Kosovo….*
>
> *[…]*
>
> *….The "Principles of Association", which is not an international agreement but an applicable legislation deriving from an international agreement..*
>
> *[…]*
>
> *The Principles of Association is an intermediary legal act, which stems from the "First International Agreement", adds additional elements in the process of creating the legal entity itself (the Association/Community), and precedes the founding act (Decree of the Government of Kosovo on Establishment, as per Article 2 of the Principles of Association), hence having a conditioning effect on the founding act.*

The above descriptions provide three elements for delineating the atypical legal nature of the document entitled the "Principles of Association": First, the "Principles of Association" is a legal act; second, the "Principles of Association" derives from the "First Agreement" and it is aimed at implementing the obligations contained therein; third, the "Principles of Association" adds new element to the original obligations foreseen by the "First Agreement."

Neither the general legal terminology nor the legal system of the Republic of Kosovo provides any conceptual venue for discerning the meaning of the term "intermediary legal act." This is not the case, however, with the definition of "legal act," as this is a very usual doctrinal endeavor in the legal theory and juridical practice.

One of the most commonly referred doctrinal sources for the definition of "legal act" is Hans Kelzen's book "The Pure Legal Theory."[1] Kelzen defines

[1] Hans Kelzen, *The Pure Legal Theory* (1960; Knight trans.), Berkeley 1967, Union (N.J.) 2002.

the legal act as "an act by means of which a legal norm is issued (figuratively speaking "created") or applied." Further, Kelzen clarifies that "an act is a law-creating or law-applying act only if it corresponds to the norms that govern the creation and application of the law within the legal system, that is, only if the act in question is based on the legal system."

At this stage, the Principles of Association does not meet the criteria to be labeled as an international agreement – despite the resemblances (i.e., its text of the document has been agreed in an international political process and has been authenticated through the initials of the Prime Ministers of two countries, namely the Republic of Kosovo and the Republic of Serbia). In the formal sense, the legal obligations deriving from the Principles of Association, which have been assumed by the Republic of Kosovo, generate constitutional effects. Hence, this "document" represents a legal act, within the ambit of the domestic legal system of the Republic of Kosovo, by the virtue of the fact that it introduces new formal norms into the domestic legal system.

In my view, the complexity of the political and legal backdrop upon which the Principles of Association, as a legal act, came into the existence and subsequently referred to the Court for its evaluation, should not prevent the Court from addressing genuinely the legal question addressed to it by the Head of State, namely the President of the Republic of Kosovo (I recall in this regard that the Government of Kosovo has also repeatedly stated that it will not undertake any step towards the implementation of the Principles of Association, prior to the evaluation of its constitutionality by the Court, and that it will respect any decision of the Court). Nor should the Court be prevented from addressing in an unambiguous and clear legal language the question of the constitutional (in)compatibility of the Principles of Association, by referring to the argument that Kosovo has an obligation to establish the Association/Community, arising from the First Agreement, which has been duly ratified and promulgated. It is important to note that even in the decision reached by the majority (Paragraph 104) it is rightly underlined that "…the questions raised in the present Referral are of utmost importance and relevant to the constitutional order of Kosovo. Moreover, <u>there is no other institution in the Republic of Kosovo where to the Applicant could address them</u>."

IV. Failure to answer the essence of the constitutional question submitted to the Court

The decision reached by the majority does not answer the essence of the question, namely is the Principles of Association compatible with the spirit and Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their members] of the Constitution?

The decision rightly identifies some paragraphs of the Principles of Association which are in contradiction with the Constitution, but it falls short of qualifying them, clearly and unequivocally, as such. Moreover, the decision does not provide clear constitutional guidance to avoid the contradiction between these provisions of the Principles of Association and the Constitution.

- ***The unconstitutional provisions of the Principles of Association identified by the decision, but not appropriately addressed.***

A decision reached by the majority of the Court indicates, in a rather relative language, that some provisions of the Principles of Association are in contradiction with the Constitution.

Thus, Paragraphs 153 and 154 of the decision read as follows:

> *"153. The Court notes that the Principles regarding the organizational structure of the Association/Community raise concerns regarding respect for the diversity of communities resident within the participating municipalities, and the reflection of this diversity in the staffing and structures of the Association/Community as required by the Constitution of the Republic of Kosovo.*
>
> *154. The Court recalls that the First Agreement, point 3 determines the structure of the Association to be established on the same bases as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council".*

The Court uses the flexible term "raises concerns," regarding respect for diversity of communities municipalities, instead of establishing clearly that this fact contravenes the spirit of the Constitution, and, particularly, the Article 3.1 (as it will be elaborated below).

In relation to the above, in Paragraph 155, the majority of the Court makes another problematic suggestion, when concluding that:

> *"...155. The Court finds that when these Principles on the organizational structure of the Association/Community are elaborated into a legal act and the Statute, they shall secure respect for the diversity of communities resident in the participating municipalities, in accordance with Articles 3, 7, 57.1, 61, and 62 of the Constitution."*

This line of reasoning is repeated in other paragraphs of the decision reached by the majority, where the contradiction between certain paragraphs of the Principles of Association with the Constitution is "noted": Paragraphs 137/138 (the objectives of the Association); Paragraphs 166/167 (the right of the Association to promote the interests of the Kosovo Serb community in relation with the Central authorities); Paragraph 166/1967 (legislative initiative); Paragraphs 180/181 (financial transfers from central government to municipalities and the right to decide on their expenditure).

Legal act, which, to use the language of the Decision "shall elaborate" the provisions of the Association, is primarily the decree, which is just an implementing act stemming from the Principles of Association (the Court in its decision mentions also the statute).

As the referral submitted by the President succinctly underlines that the Principles of Association have a conditioning effect on the founding act, namely the decree. It should be also underscored that the statute of the Association shall be infused into the legal system of Kosovo, only through the decree of the Government/Prime Minister. So, only the decree shall be eligible for direct review by the Court – pursuant to Paragraph 2 of the Principles of Association. As such, the decree cannot amend the Principles of Association in any fundamental way, as the decision reached by the majority suggests, but the opposite, the Principles of Association sets the general legal confines within which the decree shall be adopted. It transpires, therefore, that the decree cannot be in contradiction with the Principles of Association. Consequently, the decree cannot play the corrective function in terms of eliminating the provisions of the Principles of Association which are inconsistent with the Constitution.

The decision reached by the majority does not elaborate the causal legal relation between the Principles of Association with the decree and other corresponding legislative acts, which shall serve the purpose of establishing the Association/Community. It is worth emphasizing that in the paragraph 114 of the decision, it is provided that "the Referral is about the Principles upon which the Association/Community will be established as foreseen by point 1 of the First Agreement." This indicates clearly that the Principles of Association clarify the legal boundaries for the establishment and operation of the Association/Community. As such, they cannot be amended by the decree or the statute, as the decision of the Court wrongly suggests.

It is my believe that the outcome of this line of reasoning followed by the majority will be that in every important stage of the establishment and functioning of the Association/Community a need will arise to interpret and reinterpret the disharmony between the constitutional principles with the provisions of the Principles of Association and the corresponding legislation.

) *Erroneous interpretations of certain key provisions of the Principles of Association*

I disagree with part of the conclusion reached by the majority and reflected in the decision, related to some of the key elements of the Principles of Association.

Thus, in elaborating the legal grounds for the establishment of the Association, the decision blurs the line between three different chapters/domains of the Constitution, namely, Article 12 [Local Government]; Chapter II [Fundamental Human Rights and Freedoms] and Chapter X [Local Governance and Territorial Organization]. This leads to incorrect corollary – at least in an indirect way, that the legal bases for the establishment of the Association/Community can be inferred from these three Chapters.

Thus, in elaborating the "legal framework" of the Principles of Association, the decision reads as follows:

> "*The Court further recalls that the Association/Community is foreseen by the First Agreement, inter alia, point 3 provides that "The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities, e.g. President, vice President, Assembly, Council."*
>
> *[. . .]*
>
> *"That implies that Article 12, Article 21.4 and Article 44, as well as Article 124.4 of the Constitution shall be taken into consideration."*

Further, the decision reached by the majority concludes in an elusive language that:

> *"..... the Court finds that in the elaboration of the chapter on Legal framework of the Principles into a legal act, the Government, has to meet the constitutional standards. Considering that this legal act defines the nature of the Association/Community to be established, it must be in compliance with Articles 12, 21.4, 44 of the Constitution, as well as Article 124.4 of the Constitution (136).*

Article 12 [Local Government] has two paragraphs, and it stipulates that the municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo and the organization and powers of units of local self-government are provided by law."

This Article does not provide any legal venue for any kind of association of municipalities to have the status of a separate unit of self-governance.

Article 21 of the Constitution [General Principles of Association] is an essential part of the Chapter II [Fundamental Rights and Freedoms]. Paragraph 4 of this Article stipulates that:

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

Article 44 enshrines the right to the freedom of association, as one of the fundamental human rights and freedoms, which, by the virtue of Article 21, shall extend to the legal persons to the extent possible.

The freedom of association is a vital ingredient of the corpus of human rights and freedoms, which belongs to the individuals, either individually or by the virtue of their belonging to a collectivity/group.

However, contrary to the reasoning of the decision reached by the majority, the constitutional provisions dealing with the fundamental human rights do not apply to the public institutions, which deliver public functions – municipalities being one of them.

As an additional argument, Article 59 [Rights of Communities and their Members], paragraph 14 of the Constitution, which is referred in the decision, provides for the right of the members of the communities, individually or in community:

> "*...to establish associations for culture, art, science and education as well as scholarly and other associations for the expression, fostering and development of their identity*."

Again, this right belongs to the category of human rights recognized to the members of ethnic communities, individually or collectively, not to the municipalities, associations formed by them, or other public bodies of the government.

The reasoning of the majority of the Court fails to make clear distinction between the freedom of association, as a fundamental human right (Article 44), with the Article 124.4 [Local Self-Government Organization and Operation] of the Constitution, which provides for the inter-municipal cooperation and cross-border cooperation in accordance with the law.

There are three crucial legal facts, disregarded by the decision reached by the majority, which clarify the issue of the legal basis for the municipalities to create the Association/Community.

First, municipalities cannot rely on Article 21 and 44 of the Constitution, as the legal basis for the creation of the Association/Community, because the issue of human rights in the Constitutional order of the Republic of Kosovo cannot be subjected to the *ad-hoc* territorial-based legal regimes. Municipalities represent the basic unit of the local government, which have a territorial identity.

Article 4, paragraph 1, of the Law on Local Self-Government of Kosovo defines municipalities as:

> *"...the basic unit of local self-government in Republic of Kosovo, made up of*
> *community of citizens of a specific territory defined by law and shall exercise all powers which are not explicitly reserved for the central institutions."*

Article 21 [General Principles of Association], paragraph 1 of the Constitution proclaims that: "Human rights and fundamental freedoms are <u>indivisible</u>, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo."

As e general principles, "indivisibility," as a fundamental feature of every modern legal regime for the protection of human rights, inhibits any kind of "divisibility," including a territorial-based one.

Second, Article 123, Paragraph 3 of the Constitution stipulates that:

> *"The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects <u>the European Charter of Local Self-Government</u>.*

The European Charter of Local Self-Government (Article 10, paragraph 1) establishes that in exercising their power:

> *"local authorities shall be entitled to co-operate, and, within a framework of the law, to form consortia with other local authorities in order <u>to carry out tasks of common</u> interest."*

According to this provision of the European Charter of Local Self-Government, the association of the municipalities is related to the exercise of their (public) functions. Consequently, the basis of cooperation and association <u>can be the common interest of the municipalities</u> – <u>not the interest of particular groups within the municipalities</u>, be they ethnic, religious, ideological or other (as it is the case with the Association/Community).

Third, Article 31 [Right of Municipalities to Associate] of the Law on Local Self-Government provides that:

> *"For the protection and promotion of their common interests, municipalities may form and belong to associations that operate in conformity with the law."*

In a logical interpretation of this provision of this Law, which has the character of *Lex Specialis* for this legal domain, the association of the municipalities should be formed by the municipalities themselves, not by the central authorities. This is not the case with the Association/Community, which, according to the Principles of Association, shall be established by the decree of the Government/Prime-Minister (by this logic, nothing would prevent the Government of the Republic of Kosovo to use this precedent in the future to create, by decrees, other ethnically-based associations of municipalities, endowed with public functions).

In light of the above, the reasoning of the majority of the Court on the issue of the legal framework for the establishment of the Association/Community, as provided by the Principles of Association, is based on incorrect reading of articles 12, 21,44 ad 124 of the Constitution. I am of the opinion that neither Article12 (which establishes the municipalities as the basic territorial unit of the local self-government); nor the Articles 21 and 44 (pertaining to the fundamental human rights and freedoms), nor Article 124 (related to the local self-government), provide the legal basis for the establishment of the Association/Community, in the legal format envisaged by the Principles of Association.

This, however, does not mean that the municipalities do not have the right to form associations. The Constitution and the respective laws of the Republic of Kosovo provide for the enjoyment of that right by the municipalities, and that right belongs also to the municipalities which are supposed to join the Association/Community of Serb municipalities in Kosovo. But, that must be done within the constitutional and legal confines in force at the time of their creation.

The majority has made another flawed interpretation of the right of the Association/Community to initiate proceeding before the Constitutional Court (Paragraph 11 of the Principles of Association). The Decision reached by the majority of the Court established that:

> *"The Court finds that the Association/Community may only initiate proceedings before the Constitutional Court where the Association/Community, as an entity having legal personality, can claim to be a victim of a violation of its fundamental rights*

> *and freedoms guaranteed by the Constitution within the meaning of Article 113.7 of the Constitution."*

This conclusion reached by the majority is based on misplaced legal correlation between the articles 21.4 and 113.7., of the Constitution.

This interpretation is contradictory in itself, because Paragraph 11 of the Principles of Association provides that:

> *"The Association/Community will have the right to initiate or participate in proceedings before the competent courts, including to the Constitutional Court, against any acts or decisions from any institution affecting the exercise by the Association/Community of its powers in accordance with its Statute."*

Article 113.7 of the Constitution, referred to in the decision reached by the majority, provides that:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution...."*

Even if the Association/Community would be qualified as legal person, within the meaning of the Article 21.4., which I think would be an incorrect interpretation, Article 113.7., would not grant the Association/Community the right to refer to the Constitutional Court acts or decision of the public institutions which would affect the exercise by the Association/Community of its powers in accordance with its Statute.

Power of public institutions cannot be associated with the human rights of the individuals or collectivities, in terms of their standing before the Constitutional Court – as the above reasoning followed by the majority implies. In addition, the right of the Association/Community to initiate proceedings before the Court does not fall within the scope of Article 113.4., which authorizes municipalities, but not associations of municipalities, to contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.

V. Incompatibility of the Principles of Association with the spirit of the Constitution, Article 3, paragraph 1 (multi-ethnic nature), Chapter II (basic rights and freedoms) and Chapter III (rights of communities and their members) of the Constitution of the Republic of Kosovo.

The Principles of Association violate the spirit of the Constitution, Article 3 [Equality Before the Law], Paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their members] of the Constitution.

The spirit of the Constitution is defended through integrated and genuine interpretation of the basic provisions (which embody the fundamental principles of the constitutional order), as well as the systematic and consistent reading of the operative provisions (through which these fundamental constitutional principles are materialized). It is my belief that the Principles of Association stand in contradiction with some of the most fundamental principles of the constitutional order of the Republic of Kosovo.

- ***Constitutional tension between the Paragraph 8 of the Principles of Association with the principles of sovereignty.***

Paragraph 8 of the General Principles establishes a horizontal line of institutional interaction between the Association/Community with the central government. In addition to being in contradiction with the Article 93.6., of the Constitution, which gives the mandate to the Government of Kosovo "*... to guide and oversee the work of administration bodies*," this Paragraph adds great confusion in terms of the vertical line of the distribution and delivery of the public authority in the Republic of Kosovo. Consequently, the Principles of Association blurs the line of the hierarchical order between the central authorities of the Republic of Kosovo and the Association/Community. The existence of a vertical institutional line according to which the public authority within a given country is delivered, forms the pivot of the principle of sovereignty.

Sovereignty represents one of the most essential principles guaranteed by the Constitution.In the most common and simplistic definition, sovereignty means that a state is the highest political authority within its borders and independent and equal, in formal sense, with the other states in the international realm. The internal dimension of the sovereignty is materialized through an integrated and hierarchical institutional structure.

It would be misplaced to conclude that the Principles of Association encroach directly on the principle of sovereignty. They do not. The Principles of Association provides that the Association/Community is bound by the Kosovo law. Yet, in the most basic illustration, the sovereignty is manifested through the dual process of creation and implementation of norms and policies. The fact that Paragraph 8 of the Principles of Association establishes the horizontal line of communication and cooperation has a potential for creating constitutional confusion in terms of

the exercise of public authority. It should be noted, as an additional subjective factor, that the political positions of the two actors in the process of creation of the Association/Community, namely the Republic of Serbia and the representatives of the municipalities which are supposed to compose the Association/Community, aggravates the tension between the Principles of Association with the principle of sovereignty. I recall that both these two parties/actors openly voice their opposition to the statehood of Kosovo and reject its sovereignty.

- ***Principles of Association provides for a new unit of self-government - the Association/Community***

The Principles of Association envisages the establishment of the Association/Community with many elements and features of a distinct unit of self-government with, *inter alia*, executive-type of competences. The Principles of Association defines the Association as a "legal entity" with "distinct character" (paragraph 2). As opposed to the Association/Community, the Statute of the Association of the Kosovo Municipalities, for example, defines that Association as "nonprofit able organization which is a legal subject that represents general interests of its members – Local Authorities (Article 2.1., of the Statute of the Association of Kosovo Municipalities).

In defining the objectives of the Association, Article 4 of the Principles of Association stipulates that:

> *"In accordance with the First Agreement, the Association/Community will have as its main objectives in delivering public functions and services…"*

Delivering "public functions" is an attribute of the government bodies, which, as a general rule, does not belong to non-government or private organizations. In line with this, the careful interpretation of the "Objectives" of the Association of the Kosovo Municipalities leads to the same conclusion, whereby the objectives of this Association is reduced to mainly providing services to its members (i.e., municipalities).

There are other elements of the Principles of Association which give to the Association/Community the traits of a separate unit of self-government vested with executive, in addition to supervisory and representative functions. Some of these elements are as follows:

- Municipalities do not have the right/legal possibility to leave the Association (Paragraph 17 of the Principles of Association) – as opposed to the Association of the Kosovo Municipalities, where, according to the Article 5.1.4., of the Statute, "Municipal

Assembly can take decision to withdraw from the membership in the Association.

- The staff of the administration of the Association shall "benefit" from the Law on Civil Service (this Law applies to the employees in the public sector).

- The Principles of Association establishes that the Association/Community will be entitled to co—own companies that provide local services within the scope of the Association/Community as well as to have its own budget, which will be administered in accordance with the law on public procurement and will be subject to audits by the Auditor General.

All these elements, provided by the Principles of Association, grant to the Association/Community the attributes of a distinct unit of self-government, endowed with certain executive powers. This is not within the meaning of Article 12 and Article 124 of the Constitution [Local Self-Government Organization and Operation].

) ***Principles of Association are incompatible with the principle of multi-ethnicity and non-discrimination***

The Decision of majority fails to establish a clear contradiction between the Principles of Association with two essential principles of the Constitution, namely the principle of multi-ethnicity and non-discrimination.

In Article 3.1., of the Constitution it is stipulated 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.*

Article 24 [Equality Before the Law] provides that:

> "*1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
>
> *2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*

> *3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*"

Article 57 [General Principles of Association], paragraph 1, of Chapter III [Rights of Communities and Their Members] stipulates that:

> "*Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as* set *forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution. "*

Article 58 [Responsibilities of the State] reads as follows:

> *"1. The Republic of* Kosovo *ensures appropriate conditions enabling communities, and their members to preserve,* protect *and develop their identities.*
>
> *[. . .]*
>
> *4. The Republic of Kosovo shall adopt adequate measures as may be necessary to promote, in* all *areas of economic, social, political and cultural life, full and effective equality among members.*"

In general legal doctrine and practice, discrimination is defined as the practice of unfairly treating a person or group of people differently from other people or groups of people.
Along these lines, Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination defines "racial discrimination" as:

> *"...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."*

Article 4 of this Convention provides that:

> *"Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."*

The Principles of Association embraces a territorial-based approach to the rights of particular ethnic community in the Republic of Kosovo, namely the Kosovo Serbs. In conjunction, the two fundamental components of the Principles of Association, namely ethnic and geographic ones, produce a new legal reality in the Republic of Kosovo, whereby certain portion of the ethnic Serb community who lives in the Republic of Kosovo is granted collectively different, meaning more advanced, political and legal status in the country. This differentiation creates "more favored" and "less favored" socio-political collectivities - which are defined by the objective elements of ethnicity and geography. Consequently, the new legal reality that will be created with the Principles of Association and the legal acts deriving there from goes contrary to the principle of multi-ethnicity and non-discrimination, which are integral elements of the spirit of the Constitution and hence represent one of the basic tenets of the constitutional order of the Republic of Kosovo.

There are two layers of differentiation introduced by the Principles of Association.

The first layer of differentiation is between the Kosovo-Serbs who live in the municipalities which are included in the Association/Community and the Kosovo-Serbs who live in the other municipalities of the Republic of Kosovo, not included in the Association/Community. Apparently, only the Kosovo-Serbs who live in the municipalities where the Serbs are in majority-in demographic terms are "entitled" to benefit from the advanced political position granted by the Association/Community. Kosovo-Serbs living in other municipalities, for example, will not have any say in the election of the Assembly, as the main body of the Association/Community, and, by default, in other bodies of the Association (Paragraph 6 of the Principles).

The second layer of differentiation is between the Kosovo-Serbs living in the municipalities included in the Association/Community, with the citizens of other ethnic backgrounds, who live in these municipalities.

The Association/Community is ethnocentric and this is expressed also by its title: "Serb-majority municipalities," instead of using other terminology that

is not exclusionary along social identity lines (e.g., mentioning the municipalities by their official names).

As elaborated above, the legal framework as well as the applicable international standards, do not provide for the cooperation of the municipalities to be motivated by the objective of advancing the interests of particular groups, ethnic or other, who live or reside in those municipalities. The only legitimate and legal basis of cooperation between the municipalities, including in the form of association, is the advancement of the interest of the municipalities, as a whole, meaning all citizens living ore residing within them, regardless of ethnic affiliation.

This is not the case with the Association/Community, and this is reflected in the Principles of Association. A Bosniak who lives in Leposavic, or a Roma in Gracanica, for example, although they may pay taxes and vote in their respective municipalities, they will not be entitled to be represented by the Association/Community, only because of their ethnicity. Moreover, they will be denied the enjoyment of the right to be elected or employed in certain positions and functions created by the Association/Community. I recall that according to Paragraph 9 of the Principles, "the Association /Community will promote the interests of the Kosovo Serb community in its relations with the central authorities.

Institutional differentiation between groups, including ethnic ones, is not only permitted but sometimes necessary to accommodate specific needs and socio-political aspirations. Yet, differentiation shall never embody or produce inequality. Separate but equal is not the formula applied by the Principles of Association. Consequently, difference in treatment between different groups based exclusively on racial elements, such as ethnicity, amounts to discrimination.

It is important to underline that the Constitution and the pertinent international legal instruments provide for treating specific groups separately, in positive sense. But, this can only serve two legitimate objectives: preserving certain specific rights and freedoms stemming from distinct social identities of particular groups, or reaching the goal of equality among different groups. In the case *SEJDIC AND FINCI v. BOSNIA AND HERZEGOVINA*, the European Court of Human Rights (hereinafter, "the ECtHR"), upheld that:

> *"...Discrimination means treating differently, without an objective purpose and reasonable justification", persons in similar situations. No objective and reasonable justification means that the distinction in issue does not pursue a legitimate aim or that there is not a reasonable relationship of*

> *proportionality between the means employed and the aim sought to be realized."*

Further, after underlining that "*ethnicity and race are related concepts*," the ECtHR established that:

> *"…where a difference* in *treatment is based on a race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible."*

The ECtHR underlined that Article 14 of the European Convention of Human Rights:

> *"…does not prohibit* Contracting *Parties from treating groups differently in order to correct factual inequalities between them. Indeed, in certain circumstances a failure to attempt to correct inequalities through different treatment may without an objective and reasonable justification, give rise to a breach of that Article."*

The document entitled the Principles of Association provides neither the objective nor any reasonable justification for the two-fold difference in treatment it produces. Consequently, I hold the view that the two-layered differentiation established by the Principles of Association violates the principles of multi-ethnicity and non-discrimination of the Constitution.

In conclusion, I respectfully disagree with the decision reached by the majority of the judges in Case KO 130/15, and I dissent from this decision, as I am of the opinion that the Principles of Association, as a legal act, produces substantial effects for the constitutional order of the Republic of Kosovo. This effect is manifested through a constitutional incompatibility, stemming from the contradiction of many provisions of the Principles of Association with some of the core principles of the Constitution. The full implementation of the Principles of Association within the current constitutional order of the Republic of Kosovo would be a constitutional anomaly. Hence, in order to avoid this, either the Constitution should be amended, to create permissive constitutional framework for the implementation of the Principles of Association, or the Principles of Association (together with the implementation legislation) should be meaningfully amended and reframed, in order to be in compliance with the Constitution. In an attempt to set a middle ground, the majority of the Court has reached a decision, which, in my opinion, does not prevent the perpetuation of the constitutional discrepancy between the Principles of Association with the Constitution.

Respectfully submitted,
Bekim Sejdiu

Judge

KI134/14, Applicant Sadik Thaqi - Complaint regarding the lack of investigation of the death his son

KI134/14, Resolution on Inadmissibility of 14 October 2015, published on 30 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, right to life, obligation to conduct investigations, prima facie, ratione temporis*

In this case, the Applicant alleged violation of Article 25 [Right to Life] of the Constitution and Article 2 [Right to life] of the Convention on both, substantive and procedural grounds. The substantive aspect is related to the responsibility of the authorities for the death of the Applicant's son, while the procedural aspect is related to the obligation of the State to investigate the cause of his son's death..

On substantive ground of the Referral, the Constitutional Court considered that the Referral was *ratione temporis* incompatible with the Constitution, because it was for an event occurred before the entry into force of the Constitution, and consequently, the Court did not have temporal jurisdiction. In procedural terms of the Referral, the Constitutional Court found that there is no evidence that the public prosecutor did not conduct a proper investigation when he took the decision that there was no person who could be indicted for the incident that caused his son's death. The Constitutional Court declared the Referral inadmissible in accordance with Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (1) (d) and 36 (3) (g) of the Rules of Procedure.

RESOLUTION ON ADMISSIBILITY
in
Case No. KI134/14
Applicant
Sadik Thaqi
Complaint regarding the lack of investigation of the death his son

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

The Applicant

1. The Referral is submitted by Mr. Sadik Thaqi, with residence in Prishtina (hereinafter, the Applicant).

Challenged Decision

2. The Applicant does not expressly refer to a specific decision of a public authority to be challenged.

3. He complains mainly about the failure of public authorities to determine whether "*someone should be held responsible for the violent death*" of his son.

Subject Matter

4. The subject matter is the assessment of the Applicant's Referral on the lack of a criminal investigation of the death of his son. The Applicant considers that his rights, as guaranteed under Article 25 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 2 of the European Convention on Human Rights were violated (hereinafter, the ECHR).

Legal Basis

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

Proceedings before the Constitutional Court

6. On 1 September 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 5 September 2014, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

8. On 12 September 2014, the Court informed the Applicant of the registration of the Referral.

9. On 29 June 2015, by Decision No. KSH.KI134/14, the President of the Court appointed Judge Ivan Čukalović as a member to the Review Panel replacing Judge Kadri Kryeziu whose mandate in the Constitutional Court ended on 26 June 2015.

10. On 14 October 2015, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral.

The Facts of the Case

11. According to the Applicant, and as it appears from the submitted documents, the facts of the case may be summarized as follows.

12. On 4 September 2003 a number of inmates in Dubrava Prison attacked the unarmed prison guards and took control of Pavilion 2 of the Dubrava Prison. The inmates barricaded the entrance to the cell block using mattresses and thereafter requested, *inter alia,* improved living conditions from the prison management.

13. On the same date, an intervention team started to remove mattresses which had been used by the inmates as a barricade. In response, prisoners set fire to the mattresses and, as a consequence, 5 (five) inmates died from the inhalation of toxic fumes and injuries sustained

in the ensuing fire. The Applicant's son, Ardian Thaqi, was one of the prisoners that died in the riot in the Dubrava Prison.

14. On 5 September 2003 the United Nations Interim Administration in Kosovo (hereinafter: UNMIK) prosecutor requested examination and autopsies of the bodies of the five deceased inmates.

15. On 7 September 2003 the UNMIK Central Criminal Investigation Unit (hereinafter, the CCIU) published a report on the preliminary investigation on the incident

16. On 10 September 2003 UNMIK established a special commission, called "the Dubrava Commission" in order to, *inter alia*, establish the events of 4 September 2003 and the facts and circumstances that had led up to them.

17. The Dubrava Commission reviewed the manner in which the incident had been addressed by the authorities, the prisoners' complaints and then reasons for the incident; the contingency plan for addressing prison unrest; previous prison incidents; inmate conditions as well as management and prison training.

18. On 22 September 2003 the UNMIK Police Component initiated criminal investigation into the incident entitled "Causing General Danger through Fire being Grave Acts against General Security and Resulting in Murder."

19. On 4 November 2003 the Dubrava Commission completed its review and published a report in which it made thirty-nine (39) recommendations in order to establish good prison management standards in prison.

20. On 10 August 2004 the UNMIK prosecutor requested that the UNMIK investigators expand the scope of investigation and to include possible criminal conduct or criminal negligence by the Panel Management Division or other UNMIK employees. However, this recommendation was ignored by UNMIK authorities.

21. On 9 December 2008European Union Rule of Law Mission in Kosovo (hereinafter: EULEX) took over responsibility from UNMIK for pending legal cases and police investigations, and the documentation related to the Applicant's case was officially handed over to EULEX on 23 December 2008, in accordance with Article 15.10 of the Law No. 03/L052 on the Special Prosecution Office of the Republic of Kosovo (hereinafter Law on the Special Prosecution Office).

22. On 16 July 2010 the EULEX Prosecutor terminated the proceedings against the prisoners, finding that there was no justified suspicion that the defendants had committed criminal offences.

23. The Applicant was informed of this decision by a letter dated 16 July 2010. He had the option of either submitting a written application for an extension of the investigation to a pre-trial judge or filing an indictment against the defendants before the competent District Court within eight (8) days of the receipt of the notification of the termination of the investigation in accordance with Article 15.12 of the Law on the Special Prosecution Office and Articles 62 and 224 of Provisional Criminal Procedure Code of Kosovo, which was in force at that time. Apparently, the Applicant did not exercise either option.

24. On 6 September 2010 the Applicant registered a complaint with the Human Rights Review Panel (hereinafter, the Panel).

25. With regard to the complaint against UNMIK, the Panel observed that it lacked jurisdiction to examine the actions or omissions by UNMIK and therefore declared it inadmissible.

26. With regard to the complaint against prison authorities, the Panel observed that it is incompatible *ratione temporis* with its jurisdiction and thus found it inadmissible.

27. With regard to the complaint against the prisoners, the Panel observed that the prosecution of prisoners was admissible under its mandate. However, the Panel found that EULEX discharged its responsibilities with regard to this investigation and consequently held that was no violation of Article 2 of the ECHR.

28. During the year 2013, the Applicant contacted the numerous organs requesting the investigation of his son's death, including the Ministry of Justice, the Supreme Court of the Republic of Kosovo, the Office of the Chief State Prosecutor, the Office of the Chief Prosecutor of EULEX, and the European Court of Human Rights.

29. In a letter dated 19 March 2013 the Supreme Court of the Republic of Kosovo notified the Applicant that it is not within its mandate to conduct investigations and that the issue of investigation in this case is within the competence of other organs.

30. In a letter dated 3 May 2013 the State Prosecutor directed the Applicant to contact the Prosecution of EULEX since the Applicant's case was conducted from the beginning by UNMIK and later handed to EULEX and was not handled by the State Prosecutor.

31. In a letter dated 15 July 2013 the Deputy Prime Minister and the Minister of Justice informed the Applicant that he should pursue this legal course with the competent authorities.

32. In a letter dated 07 June 2013 the Office of the Chief Prosecutor of EULEX informed the Applicant that an investigation may be re-opened only if new evidence is available that was not previously administered and considered.

Applicant's Allegation

33. As stated above, it is understood from the facts of the case that the Applicant alleges violations of Article 25 [Right to life] of the Constitution and Article 2 [Right to life] of the ECHR on both, substantive and procedural grounds. The substantive aspect is related to the responsibility of the authorities for the death of the Applicant's son, while the procedural aspect is related to the obligation of the State to investigate the cause of his son's death.

Relevant Law

34. The Court notes the time of these events and during the time that these investigations were undertaken, the applicable law and respective provisions relevant to the case were as follows:

Provisional Criminal Procedure Code of Kosovo, promulgated by UNMIK Regulation 2003/26 of 6 July 2003

Article 62

(1) Except in the cases provided for under Articles 226 and 227 of the present Code, when the public prosecutor finds that there are no grounds to undertake an investigation or prosecution of a criminal offence which is prosecuted *ex officio* or by means of a motion or when he or she finds that there are no grounds to prosecute any of the reported accomplices, or when he or she is deemed by the present Code to have withdrawn from prosecution, the public prosecutor must notify the injured party of this within a period of eight days and instruct him or her that he or she may undertake prosecution as a subsidiary prosecutor. The same procedure shall also be followed by a court if the public prosecutor has withdrawn from prosecution, before the beginning of the main trial.

(2) The injured party has the right to undertake or to continue prosecution within eight days of the date of receipt of the notification under paragraph 1 of the present article.

(3) If the public prosecutor has withdrawn the indictment, the injured party may, in undertaking prosecution, abide by the indictment already filed or file a new one.

(4) An injured party who has not been notified that the public prosecutor did not undertake prosecution or withdrew from prosecution may make his or her statement that proceedings are being continued before the competent court within three months of the date on which the public prosecutor rejected the report or the date on which the ruling to terminate proceedings was rendered.

[...]

Article 224

(1) The public prosecutor shall terminate the investigation if at any time it is evident from the evidence collected that:

1) There is no reasonable suspicion that a specific person has committed the indicated criminal offence;
2) The act reported is not a criminal offence which is prosecuted *ex officio*;
3) The period of statutory limitation for criminal prosecution has expired;
4) The criminal offence is covered by an amnesty or pardon; or
5) There are other circumstances that preclude prosecution.

(2) The public prosecutor shall within eight days of the termination of the investigation notify the injured party of this fact and the reasons for this (Article 62 of the present Code) The public prosecutor shall immediately inform the pre-trial judge about the termination of the investigation.

Law No. 03/L-052 on the Special Prosecution Office of the Republic of Kosovo

Article 15 – Transitional Provisions

[...]

15.10 Upon the entry into force of this law, all files, information, archives and data, in electronic and hard copies related to cases

currently investigated, prosecuted or dismissed by UNMIK International prosecutors and held by the United Nations Mission in Kosovo (UNMIK) Department of Justice will be handed over to the Chief EULEX Prosecutor, pursuant to the modalities as established in Arrangements between UNMIK and the EULEX Kosovo.

Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo

Article 7 - General authority of EULEX prosecutors

7.1 EULEX prosecutors will have the authority and responsibility to perform the functions of his or her office, including the authority to conduct criminal investigations and take responsibility for new and pending criminal investigations or proceedings, within the SPRK or within the prosecution offices to which he or she is assigned to by the Chief EULEX Prosecutor and according to the modalities as established by the present Law and by the Assembly of the EULEX Prosecutors.

7.2 EULEX prosecutors will cooperate with the Kosovo Public Prosecutors working within the different prosecution offices to which he or she is assigned to, in accordance with the modalities as established by the present law and by the Assembly of the EULEX Prosecutors.

7.3 Besides exercising their investigating and prosecutorial functions pursuant to the provisions of Article 8 of this law, the EULEX prosecutors will monitor, mentor and advise the Kosovo Public Prosecutors in the respect of the principle of autonomy of prosecutors and in accordance with the modalities as established by the present law and by the Assembly of the EULEX Prosecutors. Their role as monitors, mentors and advisors will not be limited to the cases for which the EULEX prosecutors can exercise their competences.

7.4 EULEX prosecutors will discharge their functions in compliance with the applicable law. They will be under the exclusive authority of the Chief EULEX Prosecutor and will not be subject to the authority of any Kosovo institution.

Article 8 - Competences of EULEX prosecutors in Kosovo

8.1 The EULEX prosecutors will be competent to investigate and prosecute the crimes, that fall under the exclusive competence of the SPRK in accordance with the law that establishes the SPRK, and the crimes, including the attempt and the various form of collaboration to the crimes, listed in all items of paragraph 3 of Article 3 of this law.

Assessment of the Admissibility of the Referral

35. First, the Court examines whether the Applicant has fulfilled the admissibility requirements set out in the Constitution, and as further specified in the Law and the Rules of Procedure.

36. 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."

37. The Court takes into account Article 47 of the Law on the Constitutional Court which provides that:

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

38. In connection with this, the Court reviews whether the Applicant meets all requirements to be an authorized party, in compliance with respective constitutional and legal provisions.

39. For this purpose, the Court refers to its case law. In this regard, the Constitutional Court has recognized as an authorized party the parents of the deceased (see *Gëzim and Makfire Kastrati v. Municipal Court in Prishtina and Kosovo Judicial Council*, KI41/12, Judgment of 26 February 2013).

40. In addition, the Court emphasizes that also the European Court of Human Rights (hereinafter: the ECtHR) in similar cases received individual requests from persons that are considered as indirect victims, where there is a personal and specific connection between the victim and the Applicant. Furthermore, the ECtHR has recognized as an authorized party the spouse of the deceased (see *McCann and Others v. United Kingdom*, no. 18984/91, Judgment dated 27

September 1995), while in another case the nephew of the deceased was recognized as an authorized party (see *Yaşa v. Turkey*, no. 631997/847/1054, Judgment dated 2 September 1998).

41. Consequently, taking into account that the Applicant is the parent of the deceased, the Court concludes that the Applicant may be considered an authorized party pursuant to Article 113 (7) and Article 47.1 of the Law.

As to the substantive aspect

42. As to the Applicant's Referral regarding the responsibility of authorities in the events which led to death of his son, the Court refers to Rule 36 (3) (g) of the Rules of Procedure, which reads as follows:

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

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

44. In this respect, the Court reiterates that the death and alleged murder of the Applicant's son occurred on 4 September 2003.

45. This means that the alleged interference with the Applicant's right guaranteed by the Constitution occurred prior to 15 June 2008, which is the date of entry into force of the Constitution and from which date the Court has temporal jurisdiction.

46. The Court emphasizes that the jurisprudence of the Constitutional Court is in conformity with the case law of the ECtHR while deciding that the events occurred before the entry into force of the Constitution on 15 June 2008 are incompatible *ratione temporis* with the Constitution and thus do not fall under its temporal jurisdiction. (See, among others, Constitutional Court Resolutions in Case No. KI152/11, Applicant *Bekim Murati*; Case No. KI07/11, Applicant *Vehbi Klaiqi*; Case NO. KI128/11, Applicant *Ismet Boshnjaku*).

As to the procedural aspect

47. As to the Applicant's complaint for the lack of investigation by responsible authorities, the Court notes that the Applicant, did not exercise his option under the applicable law at the time of either submitting a written application for an extension of the investigation or filing an indictment against the defendants before the District Court in a timely fashion in accordance with Article 62 of the Provisional Criminal Procedure Code of Kosovo. Thus, it appears that the forfeited the right to complain.

48. The Applicant has not established what additional investigation could be done by the prosecutor in this case, and he has not established whether there was any evidence that would justify an indictment now being filed against anyone with respect to the tragic death of his son.

49. In addition the Court refers to case-law of the ECtHR where it was called to address a similar issue. Namely in case *Hugh Jordan v UK,* the ECtHR held that the obligation to investigate *"is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including inter alia eyewitnesses' testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death."* (See *Hugh Jordan v the United Kingdom,* no. 24746/94, Judgment dated 4 May 2001)

50. Therefore, in this regard, the Court considers that the Applicant's Referral does not meet the procedural admissibility requirements, as provided by Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) of the Rules of Procedure, due to the fact he failed to substantiate his complaints.

51. It follows that the Applicant's Referral is incompatible "*ratione temporis*" with the provisions of the Constitution regarding the responsibility of Kosovo authorities in relation to the events which led to the death of the Applicant's son. As to the complaint related to the lack of investigation, the Applicant's Referral is manifestly ill-founded because there is no evidence that the public prosecutor did not conduct a proper investigation when he took the decision that there was no person who could be indicted for the incident that caused his son's death

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Article 20 and 48 of the Law and Rule 36 (1) (d) and 63 (3) (g) of the Rules of Procedure, on 28 December 2015, 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 paragraph 4 of the Law;

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur
Robert Carolan

President of the Constitutional Court
Arta Rama-Hajrizi

KI58/15, Applicant Islam Çerkini - Constitutional review of Judgment Rev. no. 210/2014 of the Supreme Court of Kosovo, of 19 February 2015

KI58/15, Resolution on Inadmissibility of 14 October 2015, published on 31 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, sale-purchase contract, equality before the law, protection of property, confirmation of ownership*

The Supreme Court rejected as ungrounded the request for revision submitted by the Applicant regarding the confirmation of the ownership of some parcels of land. The Applicant filed complaint with the Constitutional Court for violation of the right to property.

The Constitutional Court concluded that the Supreme Court broadly elaborated on the concept of alleged acquisition of property rights through sale-purchase contract and the public possession of the property in good faith for a long period of time adding that the regular courts have not declared the Applicant as the owner of the disputed properties which meant that in such a situation violation of the right to property cannot be alleged. The Referral was declared inadmissible as manifestly ill-ill-founded, in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI58/15
Applicant
Islam Çerkini
Constitutional review of
Judgment Rev. no. 210/2014 of the Supreme Court of Kosovo, of 19 February 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge.

Applicant

1. The Applicant is Mr. Islam Çerkini from village Bibaj, municipality of Ferizaj, represented by Ms. Zejnepe Zenuni, lawyer from Ferizaj.

Challenged Decision

2. The challenged decision is Judgment Rev. no. 210/2014, of the Supreme Court of Kosovo, of 19 February 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by the Constitution of Kosovo under Article 3 [Equality Before the Law], Article 7 [Values], Article 24 [Equality Before the Law] and Article 46 [Protection of Property], as well under Article 1 of Protocol 1 of the European Convention on Human Rights (hereinafter, the ECHR).

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter, the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 29 June 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 29 July 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 14 October 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral

Summary of facts

9. On 12 September 1979, the Applicant's father A. Ç. (now deceased) bought to a third party D. K. several parcels of land and forest. The sale-purchase contract remained non-formalized. Since then, this property was possessed and used without any obstacle by the Applicant's father, and later by the Applicant himself.

10. On 26 July 2006, the Applicant's father filed a lawsuit with the Municipal Court in Ferizaj for confirmation of ownership based on the sale-purchase contract of 1979 and for keeping in good faith the immovable property for more than 30 (thirty) years.

11. On 24 December 2012, the Municipal Court in Ferizaj (Decision T. no. 340/12) declared the Applicant as a single heir of the entire property of his parents.

12. On 28 December 2012, the Municipal Court in Ferizaj during the preparatory session for the case C.no.433/06 with decision subjectively modified the lawsuit, recognizing to the Applicant the status of a claimant.

13. On 30 April 2013, the Basic Court in Ferizaj (Judgment C. no. 433/06) approved as grounded the Applicant's lawsuit and declared the Applicant the owner of the parcels that were the subject of the lawsuit.

14. The Basic Court considered that "*the Claimant, by credible evidence, has proven the fact that his predecessor and now the claimant himself have held the contesting property in complete possession in good faith since 1979 until 2006 (when the claim was filed), that is, for more than 20 years*".

15. The Basic Court further concluded that "*the existence of the written piece of evidence in the legal form and level, to the best of the knowledge on legal act or education that the actors present in the sale agreement had, but in their simple, original and authentic manner have clearly reflected that they are carrying out, namely, ascertain by writing the sale-purchase act, which the claimant - A. C. and respondent D. K. had verbally concluded*".

16. On 17 June 2013, the representative of the third party D. M. filed an appeal with the Court of Appeal, due to essential violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and violation of the law.

17. On 21 March 2014, the Court of Appeal (Judgment AC. no. 1913/13) approved the appeal of the third party D. M. and modified the judgment of the Basic Court so rejecting entirely the Applicant's lawsuit as ungrounded.

18. The Court of Appeal reasoned that the sale-purchase contract *"without the description of the immovable property which is the object of the contract, without ascertaining whether the sale price had been paid by the purchaser, and, more importantly, without the signature of the contracting parties affixed to it, according to the opinion of this Court, does not represent a sale contract, because this contract does not contain all the elements of a contract and it could not produce legal effects in relation to the contracting parties*".

19. The Court of Appeal found as ungrounded the legal stance of the Basic Court for possession of property in good faith for a long period "*because the claimant, pursuant to the rules of the adverse possession, could not acquire the ownership right*".

20. The Applicant filed a request for revision with the Supreme Court, due to erroneous application of the substantive law.

21. On 19 February 2015, the Supreme Court of Kosovo (Judgment Rev. no. 210/2104) rejected as ungrounded the Applicant's request for revision.

22. The Supreme Court stated that "*the second instance court has correctly applied the substantive law, when it modified the judgment of the first instance court and approved the respondents' appeal and that the challenged judgment does not contain essential violations of the contested procedure provisions because this court has assessed all the appealed allegations as well as the relevant facts and it has provided sufficient reasons in the reasoning of the challenged judgment, which are accepted also by this Court*".

Applicant's allegations

23. The Applicant claims that the Judgment of the Supreme Court has violated his rights guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

24. The Applicant alleges that the challenged Judgment has discriminated him against in the enjoyment of property rights and has violated the principle of legal certainty and the standard of the reasoning of decision.

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 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.*"

27. 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".

28. The Court also takes into account Rule 36 of the Rules of Procedure, which provides:

"(1) The Court may consider a referral if: (d) the referral is prima facie justified or not manifestly ill-founded.

and

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

29. The Court recalls that the Applicant alleges that the challenged Judgment "Discriminated the Applicant in the enjoyment of the property right; Violated the principle of legal security; and Violated the standard of reasoning its decision".

30. However, the Court observes that the Applicant has not explained how and why the challenged Judgment discriminated him and violated the principle of legal security and the standard of reasoning.

31. Moreover, the Court notes that his allegations are based on *"erroneous and incomplete determination of factual situation and erroneous application of the substantive law".* In reality, these allegations are grounded on arguments related with the determination of facts and application of law.

32. In this regard, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or of law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality)

33. The Court recalls that the Supreme Court considered that the Court of Appeal *"has provided sufficient reasons in the reasoning of the* [appealed] *judgment, which are accepted also by this Court.* Thus, the Supreme Court also accepted that *"this contract does not contain all the elements of a contract and it could not produce legal effects in relation to the contracting parties".*

34. The Court considers that the Supreme Court answered the Applicant's grounds of appeal thoroughly reasoning why the Applicant's statement of claim was rejected.

35. In general, the Applicant has not argued how and why the conclusion of the Supreme Court, on the legal consequences of lack of "*all the elements of a contract",* discriminated him and violated the principle of legal security and the standard of reasoning.

36. More specifically, the Court considers that the Supreme Court broadly elaborated on the concept of alleged acquisition of property rights through sale-purchase contract and the public possession of the property in good faith for a long period of time.

37. In addition, the Court notes that nowhere the regular courts have declared the Applicant as the owner of the disputed properties. In such a situation, the alleged violation of Article 46 of the Constitution [Protection of Property] or of Article 1 of Protocol 1 of the ECHR cannot have happened.

38. The Court observes that the Applicant presented no evidence to support the claim that his right to equality before the law has been violated. In this regard, the Court notes that the Applicant had ample and free opportunity to present his allegations before the regular courts. Thus, the allegation that the Applicant was discriminated against by the challenged Judgment cannot be considered.

39. In fact, the Court considers that the Applicant has not built an allegation on 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"*, as required by Article 24 (2) of the Constitution.

40. The Court notes that, as mentioned above, the judgment of the Supreme Court thoroughly analyzed the Applicant's arguments of the revision on the determination of the facts and on the application of law. Thus, the right to a reasoned decision has not been violated, as alleged by the Applicant.

41. Therefore, the Court considers, in general and more specifically, that the Applicant has neither provided evidence which would point out to the violation of his constitutional rights (See: *Vanek vs. Slovak Republic,* No. 53363/99 ECHR, Decision, of 31 May 2005); nor he has substantiated an allegation on that the proceedings in the Supreme

Court have been unfair or arbitrary (See case *Shub against Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

42. The Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the Supreme Court on factual and legal matters (legality). It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain,* No. 30544/96, ECHR, Judgment of 21 January 1999, see also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).

43. In sum, the Court finds that, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 paragraph (1) d) and (2) item b) and Rule 56 (2) of the Rules of Procedure, the Referral is manifestly ill-founded and thus is to be declared as inadmissible.

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 14 October 2015, 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**
Almiro Rodrigues	Arta Rama-Hajrizi

KI64/15, Applicant Sanija Bajrami - Constitutional review of Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo, of 16 December 2014

KI64/15, Resolution on Inadmissibility of 15 October 2015, published on 31 December 2015

Keywords: *Individual referral, out of time referral, the right to fair and impartial trial, non-disclosure of identity, confirmation of ownership*

The Supreme Court rejected as ungrounded the request for revision submitted by the Applicant, regarding the confirmation of ownership over a cadastral parcel. The Applicant appealed to the Constitutional Court for violation of the right to fair and impartial trial and also requested the non-disclosure of his identity.

The Constitutional Court concluded that the Referral was submitted after the expiry of the deadline of four months prescribed by the law. The Court also rejected the Applicant's request not to disclose his identity. The Referral was declared inadmissible because it was out of time, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI64/15
Applicant
Sanija Bajrami
Constitutional review of Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo, of 16 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge.

Applicant

1. The Referral was submitted by Mr. Sanija Bajrami from the village Pojatishte, Municipality of Ferizaj (hereinafter, the Applicant), represented by lawyer Mr. Fatmir Bajraktari.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo, of 16 December 2014, by which the confirmation of his ownership of property was rejected as ungrounded.

3. The challenged decision was served on the Applicant on 20 January 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which has allegedly violated the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of Kosovo (hereinafter, the Constitution).

5. The Applicant also requests that his identity is not disclosed.

Legal basis

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

Proceedings before the Constitutional Court

7. On 25 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. On 29 June 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 13 July 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

10. On 15 October 2015, 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 12 July 2002, the Applicant filed a claim with the Municipal Court in Ferizaj requesting the confirmation of the property rights over a certain parcel of terrain.

12. The judicial proceedings went through the different instances until the Supreme Court.

13. In fact, on 16 December 2014, the Supreme Court [Judgment Rev. no. 297/2014] rejected as ungrounded the Applicant's request for revision of the Judgment of the Court of Appeal, of 2 September 2014.

Admissibility of the Referral

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

15. In this regard, 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."*

16. Moreover, 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…"*

17. The Court further recalls Rule 36 (1) (c) of the Rules of Procedure, which foresees:

> *"(1) The Court may consider a referral if:*
> *[…]*
>
> *(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant."*

18. The Court notes that the Judgment [Rev. no. 297/2014] of the Supreme Court was rendered on 16 December 2014 and served on the Applicant on 20 January 2015; the Applicant submitted his Referral to the Court on 25 May 2015; thus, the Referral was filed with the Court after the expiry of 4 months from the date the Judgment of the Supreme Court was served on the Applicant.

19. In this regard, the Court reiterates that the four months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is of preclusive nature and is established 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 constitutional review (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

20. It follows that the Referral was filed out the deadline provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such is inadmissible.

Request for non-disclosure of identity

21. The Court notes that the Applicant alleged as exceptional reason for his identity not to be disclosed the fact that the parties are brothers and "their relations are extremely deteriorated".

22. The Court considers that the presented reason does not justify granting protection of confidentiality. In addition, his identity has already been disclosed in the proceedings before the regular courts

23. Therefore, the request is rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 15 October 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT as ungrounded the request for not disclosing identity;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI71/15, Applicant Miftar Ahmetaj - Constitutional Review of Decision CML. no. 5/2014, of the Supreme Court of Kosovo, of 23 December 2014

KI71/15, Resolution on Inadmissibility of 14 October 2015 published on 31 December 2015

Keywords: *Individual referral, manifestly ill-founded referral, the right to fair and impartial trial, public auction, loan guarantee, protection of property, non-disclosure of identity*

In the present case, the Applicant proposed to the State Prosecutor to submit the request for protection of legality in relation to a property dispute. The Supreme Court rejected as ungrounded the request for protection of legality filed by the State Prosecutor. The Applicant filed complaint with the Constitutional Court for violation of the right to property and also requested non-disclosure of his identity.

The Constitutional Court concluded that the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying and substantiating by valid facts the actions of the public authority that are contrary to the constitutional norms, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the Convention. The Court also noted that the request for protection of identity should be rejected because the Applicant has not supported this request by any single evidence. The Referral was declared inadmissible as manifestly ill-founded, in accordance with Article 47 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI71/15
Applicant
Miftar Ahmetaj
Request for Constitutional Review of Decision CML. no. 5/2014, of the Supreme Court of Kosovo, of 23 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Miftar Ahmetaj from village Mushnikovë, Municipality of Prizren, who is represented by Mr. Rexhep Hasani, a lawyer from Prizren.

Challenged Decision

2. The Applicant challenges Decision CML no. 5/2014, of the Supreme Court of Kosovo, which was served on the Applicant on 26 January 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly has violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) under Article 46 [Protection of Property].

4. The Applicant requests that his identity is not disclosed without providing any justification for this request.

Legal Basis

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

Proceedings before the Constitutional Court

6. On 26 May 2015, the Applicant submitted via mail the Referral to the Constitutional Court (hereinafter: the Court).

7. On 3 August 2015, the President of the Court, by Decision GJR. KI71/15, appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

8. On 21 August 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 21 August 2015, the Court, to ascertain precisely the date of receipt of the challenged decision by the Applicant, it requested from the Basic Court in Prizren the copy of receipt of this decision.

10. On 31 August 2015, the Court received a copy of the requested return paper, indicating that the Referral was submitted to the Court within four (4) months provided by the Law.

11. On 14 October 2015 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 20 March 2013, the Basic Court in Prizren rendered Decision on case E. no. 529/10, by which "Pro CreditBank", Branch in Prizren (hereinafter: the Bank) is announced the sole bidder of the immovable property which was the subject of the mortgage, presented as a guarantee for the loan received by the Applicant. By this decision, the objections of third parties, claiming that they are co-owners of this immovable property, were rejected, and they were instructed to exercise their possible rights in the contested procedure.

13. On 20 March 2013 (on the same date), the Basic Court in Prizren rendered conclusion, appointing the Bank as a buyer of the immovable properties, which have been the subject of mortgage, by setting the price for each immovable property.

14. On 20 March 2013, in the course of the same proceedings, the Basic Court in Prizren rendered Decision, E. no. 529/2010, according to which, the immovable properties sold in the third verbal public auction were delivered to the Bank. All immovable properties were evidenced in this decision according to cadastral data, whereas as per decision, after the decision becomes final, the Bank is allowed to register the property rights over the immovable properties delivered by the Court.

15. Against these two decisions of the Basic Court, the Applicant filed an appeal with the Court of Appeal due to violation of the execution procedure, violations of the substantive law and the decision on delivery of the Applicant's immovable property to the Bank, claiming that the delivered properties do not exclusively belong to the Applicant, but they are in the co-ownership with the third parties and his wife, and therefore could not be subject to alienation.

16. On 14 July 2014, the Court of Appeal of Kosovo rendered Decision Ca. no. 3875, which in the first part rejected the Applicant's appeal against the conclusion of the Basic Court E. no. 529/2010 of 20 March 2013, as inadmissible, while in the second part rejected as ungrounded the Applicant's appeal filed against Decision, E. no. 529/10, of the same court, of the same date by upholding it.

17. In the reasoning of the Decision, the Court of Appeal stated that *"against the conclusion, in accordance with Article 12.7 of the Law on Contested Procedure is not allowed any special appeal*" and the court assessed as correct the legal stance of the first instance court when it instructed the co-owners to exercise their possible property rights in accordance with the law in the contested procedure.

18. On 27 August 2014, the Applicant filed a request for protection of legality, with the Office of the Chief State Prosecutor due to: 1) a substantial violation of the execution and contested procedure and 2) erroneous application of the substantive law.

19. On 23 December 2014, the Supreme Court rendered Decision CML no. 5/2014, rejecting as ungrounded the request filed by the State Prosecutor for protection of legality against Decision of the Court of Appeal and of the Basic Court in Prizren.

20. The Supreme Court, *inter alia*, states: *"The legislator has not provided a possibility of filing the request for protection of legality regarding the composition of the panel",* and the composition of the panel was the basis for filing the request by the state prosecutor.

Applicant's Allegations

21. The Applicant alleged that the Decision of the Supreme Court violated the rights guaranteed by the Constitution, and specifically the property right, because the mortgaged property did not belong to him in entirety, but it was in the co-ownership, and could not be alienated and nor be the subject to the court execution.

Assessment of the Admissibility of the Referral

22. In order to adjudicate the Applicant's Referral, the Court first examines whether the party 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 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. As mentioned above, the Court finds that the Applicant alleges that by challenged judgment was violated his right to protection of property (Article 46 of the Constitution), which has the following content:

> **Article 46 [Protection of Property]**
>
> *1. The right to own property is guaranteed.*
>
> *2. Use of property is regulated by law in accordance with the public interest.*
>
> *3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the*

provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

5. Intellectual property is protected by law.

25. In respect to the above, the Court notes that the Applicant only stated the violation of this constitutional provision, without providing any evidence about the nature of that violation and the circumstances under which the alleged violation occurred, and he did not explain the constitutional implications of possible violations of the Constitution.

26. The Court notes that, the mere description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying and substantiating by valid facts the actions of the public authority that are contrary to the constitutional norms, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the ECHR.

27. In this regard, the European Court of Human Rights, in case *S. v. United Kingdom*, stated that *"to invoke protection under Article 1 of Protocol 1, a person should enjoy any right provided by domestic laws, which may refer to property rights"* (submission 11716 of 1986), so it is not sufficient to file a claim and to allege violation.

28. Having considered the Applicant's Referral and the facts presented therein, the Court finds that in all stages of the court proceedings, the Applicant's complaints have been of legal nature, and that the regular courts have provided adequate responses to these complaints. The allegations of violation of human rights protected by the Constitution for the first time were raised before the Constitutional Court.

29. The Court further emphasizes that it is not a fact finding court, it does not adjudicate as a court of fourth instance and is not merely an additional instance court. The Court in principle does not deal with the fact whether the regular courts have correctly and completely determined factual situation, or, whether, as in the case at issue, there was a violation of the substantive law in terms of the conduct of execution procedure.

30. For the Court are essential those issues on which depends the assessment of possible violations of the constitutional rights and not clearly legal issues as were in general the facts presented by the Applicant (See, *mutatis mutandis, i.a., Akdivar v. Turkey,* 16 September 1996, R.J.D, 1996-IV, para. 65).

31. The Court does not find any evidence of violation of Article 46 of the Constitution [Protection of Property] or that the challenged Decision indicates an evident arbitrariness. (See the Resolution of the Constitutional Court, Case KI128/12, of 12 July 2013, the Applicant *Shaban Hoxha*, in the request for constitutional review of Judgment Rev. no. 316/2011, of the Supreme Court of Kosovo).

32. The Court also notes that the request for protection of identity should be rejected because the Applicant has not supported this request by any evidence.

33. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of violation of the constitutional right for protection of property, therefore, in accordance with Rule 36, paragraph 2, item b, finds that the Referral should be rejected as manifestly ill-founded and to declare it inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47 of the Law and Rule 36 (2) (b) and
Rule 56 (2) of the Rules of Procedure, on 14 October 2015, 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	Arta Rama-Hajrizi

KI94/15, Applicant Lulzim Ramaj and Shahe Ramaj - Constitutional review of unspecified ruling of an unspecified authority

KI94/15, Resolution on Inadmissibility of 11 November 2015, published on 31 December 2015

Keywords: *Individual referral, inadmissible referral, summarily reject*

In this case, the Applicants allege compensation of excessive financial amounts to third parties and a number of other allegations, not supported by any evidence. The Applicants in the past had submitted Referrals to the Constitutional Court, raising similar allegations.

The Constitutional Court concluded that the Applicant's Referral does not reach the minimum threshold to be considered a Referral and added that some of the Referrals submitted by these Applicants were already rejected on the grounds of being abusive and disrespectful to the Court as an institution of justice. The Constitutional Court declared the Referral to be summarily rejected and thus inadmissible, in accordance with Article 48 of the Law and Rule 32 (5) of the Rules of Procedure.

DECISION TO SUMMARILY REJECT THE REFERRAL
in
Case No. KI94/15
Applicants
Lulzim Ramaj and Shahe Ramaj
Constitutional review of
unspecified ruling of an unspecified authority

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge.

Applicants

1. The Referral is submitted by Mr. Lulzim Ramaj (son) and Mrs. Shahe Ramaj (mother) from Peja (hereinafter, the Applicants).

Challenged decision

2. The Applicants challenge an unspecified ruling of an unspecified authority.

Subject matter

3. The Applicants complain about undue prolongation of proceedings by the regular courts and largely is a repetition of previous Referrals filed by the Applicants, individually or together.

4. The subject matter of the different previous Referrals pertained to recognition of the Kosovo Liberation Army veteran status, constitutional review of decisions of the Ministry of Transport and Telecommunication, notifications of the Office of Disciplinary Counsel and allegations against certain incumbents of public offices.

5. The Applicants neither attach any “impugned” decisions to the “Referral” nor refer to a constitutional provision allegedly violated.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of the Law No. 03/121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

7. On nineteen different days in between 11 November 2014 and 24 August 2015, the Applicants have submitted with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) a set of six hundred and forty eight documents which constitutes the current Referral.

8. On 3 August 2015, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of judges Altay Suroy (presiding), Bekim Sejdiu and Arta Rama-Hajrizi.

9. On 4 August 2015, the Court notified the Applicants about the registration of the Referral.

10. On 15 September 2015, the Applicants were asked to clarify and complete their Referral.

11. On 11 November 2015, 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 summary of facts reflects the acts of the Applicants, acting individually or together generally envisaging a common result.

13. On 18 September 2014, the Applicant Lulzim Ramaj complained before the Office of Disciplinary Counsel of the High Judicial Council (hereinafter, the Counsel) about prolongation of his case (A. nr. 375/14). He complained that the Basic Court in Prishtina is prolonging the delivery of his appeal to the Court of Appeal of Kosovo.

14. On 19 December 2014, the Applicant Lulzim Ramaj filed a lawsuit with the Basic Court in Prishtina against the Ministry of Labor and Social Welfare. The Basic Court in Prishtina decided (Decision no. A. nr. 2544/2014 of 29 April 2015) to suspend the proceedings following the

Applicant's request because, for the same matter, he has submitted a referral with the Constitutional Court.

15. On 17 November 2014, the Applicant Shahe Ramaj complained before the Counsel about the prolongation of her case (C. no. 1169/13) by the Court of Appeal of Kosovo.

16. On 8 January 2015, the Counsel informed (Notification No. ZPD/14/zp/015) the Applicant Lulzim Ramaj that there was a delay to send the case to the Court of Appeal due to objective circumstances. The Applicant Lulzim Ramaj was also informed that the case was sent to the Court of Appeal on 18 September 2014 and that he should inform the Counsel if not decided within a reasonable time.

17. On 9 March 2015, the Applicant Lulzim Ramaj complained before the Counsel about the prolongation of the case (C. no. 1560/11) by the Basic Court in Prishtina.

18. On 10 March 2015, the Counsel informed (Notification No. ZPD/14/zp/148) the Applicant Shahe Ramaj that the Court of Appeal had decided her case within a reasonable time (Decision Ac. no. 903/13 dated 1 December 2014).

19. On 3 July 2015, the Counsel informed (Notification No. ZPD/15/zp/391) the Applicant Lulzim Ramaj that there was a delay in his case which was caused by a backlog of cases. The Applicant Lulzim Ramaj was also advised to inform the Counsel if the case is not decided within a reasonable time.

20. On 14 July 2015, the Counsel informed (Notification No. ZPD/15/zp/437) the Applicant Shahe Ramaj that "*The Counsel has found that on 17 May 2012 your lawsuit was accepted by the Basic Court in Peja and was given number C. no. 388/12, and that, on 18 May 2012 was assigned to judge AB. The Counsel has found that your case was decided by decision C. no. 388/12 dated 9 December 2013. On 2 July 2014, the case C. no. 388/12 – via a complaint- was sent from the Basic Court to the Court of Appeal of Kosovo where it was assigned to judge MS (now retired). The Court of Appeal by Decision AC. no. 683/14 of 12 January 2015 has decided on your case. The Counsel has found that on 29 April 2015 your case is with the Supreme Court based on request for revision under number Rev. no. 126/15 and will be decided in due time*".

Applicants' allegations

21. The Applicants complain about prolongation of their cases by the Court of Appeal and the Basic Courts in Prishtina and Peja.

22. The Applicants complain namely against previous resolutions on inadmissibility, against the manager of the Regional Post Office in Peja, against the owner and a journalist of newspaper "Express", against a third party due to obstruction in possession of property, against the Ministry of Local Government Administration and against the Kosovo Police for influencing his brothers against him.

23. The Applicants do not refer to any constitutional provision which has been allegedly violated.

24. Finally, the Applicants request namely to get compensated in sum of 2 million euro by the Director of newspaper "Telegraf" from Albania.

Assessment of admissibility

25. The Court first examines whether the Applicants have 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 113.7 of the Constitution which provides:

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

27. The Court refers to Rule 32 [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure which provide:

> *"(...)*
>
> *(5) The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous".*

28. The Court considers that the Applicants have submitted a Referral which is unclear and incomprehensible. In addition, the Referral is to a large extent a repetition of previous Referrals already decided, even

though the current Referral is presented with some adjustments pretending in a way to raise new allegations.

29. However, the Court considers that no new information or allegation is brought or raised by the Applicants.

30. Moreover, the Court notes that the content of decisions of the regular courts is unknown because no decisions were attached to the Referral.

31. In addition, there is nothing, in relation to the current Referral, which shows that the Applicants have initiated and finalized any sort of proceedings whether civil, criminal or administrative before any public authority of the Republic of Kosovo as is required by Article 113(7) of the Constitution; nor have they managed to substantiate, or indeed, make sense of their Referral in any way whatsoever.

32. The Court further notes that the Applicants have not clarified and completed their Referral as requested by it.

33. The Court recalls that identical subject matters have already been decided in other nine Referrals submitted by the Applicants: Resolution on Inadmissibility in Case no. KI126/10 (Applicant *Lulzim Ramaj*), Resolution on Inadmissibility in Case no. KI32/11 (Applicant *Lulzim Ramaj*), Resolution on Inadmissibility Case No. KI102/11 (Applicant *Shahe Ramaj*), Resolution on Inadmissibility in Case no. KI106/12 (Applicant *Lulzim Ramaj*), Resolution on Inadmissibility in Case no. KI116/12 (Applicant *Lulzim Ramaj*) and Resolution on Inadmissibility in Joined Cases nos. KI228/13, KI04/14, KI11/14, KI13/14 (Applicants *Lulzim Ramaj and Shahe Ramaj*).

34. The Court further recalls that, in the Referral KI228/13 (joined referrals KI04/14, KI11/14, KI13/14), the Applicants Lulzim Ramaj and Shahe Ramaj complained against the Resolution on Inadmissibility in case no. KI126/ 10, dated 19 January 2012; Resolution on Inadmissibility in case no. KI32/11, dated 20 April 2012; and Resolution on Inadmissibility in case no. KI102/ 11, dated 12 December 2011.

35. The Court observes that all those previous Referrals contain either individual or common subject matters; however, they all converge in the current Referral.

36. The Court considers that the current Referral does not reach the minimum threshold to be considered a Referral. Moreover, the Court notes that some of the Referrals submitted by these Applicants were already rejected on the grounds of being abusive and disrespectful to

the Court as an institution of justice (see Resolution on Inadmissibility in Joined Cases nos. KI228/13, KI04/14, KI11/14, KI13/14).

37. In sum, the Court finds that the Referral is not clearly stated despite requests by the Court to the party to supplement or clarify the referral, it is somehow repetitive of previous referrals already decided by the Court and it is frivolous.

38. Therefore, the Court, in accordance with Rule 32 (5) of the Rules of Procedure, concludes that the Referral is to be summarily rejected and is thus inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 32 (5) of the Rules of Procedure, on 11 November 2015, 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; and

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

INDEX OF LEGAL TERMS

TERMS	NUMBER OF PAGE
A	
Abstract control	303, 458, 612,
Abuse of official position	406, 408, 409,
Actio popularis	38, 42,
Accepting bribe	157, 160,
Active legitimacy	222, 226,
Adoption	475, 477, 478, 479, 480, 481,
Aggravating circumstances	160, 402, 428,
Admissible referral	62,
Public auction	706, 709,
Admissibility of the referral	15, 16, 20, 22, 24, 28, 29, 34, 35, 40, 42, 43, 47, 50, 55, 58, 65, 74, 85, 89, 96, 99, 106, 108, 114, 116, 119, 123, 127, 138, 148, 161, 164, 170, 185, 200, 206, 207, 211, 213, 217, 219, 224, 227, 230, 233, 234, 248, 255, 261, 266, 268, 271, 274, 276, 282, 283, 290, 299, 307, 314, 329, 335, 338, 343, 347, 348, 353, 355, 360, 363, 369, 371, 377, 379, 385, 387, 394, 396, 403, 408, 410, 417, 419, 425, 427, 429, 433, 435, 441, 444, 450, 464, 473, 477, 481, 487, 489, 495, 501, 503, 509, 516, 517, 525, 530, 537, 549, 554, 557, 563, 565, 571, 572, 580, 586, 591, 596, 598, 605, 609, 624, 633, 662, 683, 689, 695, 697, 703, 708, 710, 715,
Amendment	199, 202, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 347,

627, 629, 638, 646, 651, 654, 656, 658, 660,

Applicant

11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 251, 252, 253, 254, 255, 256, 257, 28, 259, 260, 261, 262, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 280, 281, 282, 283, 284, 286, 287, 288, 289, 290, 291, 292, 294, 295, 296, 297, 298, 299, 300, 301, 303, 304, 305, 306, 308, 309, 310, 311, 312, 313, 314, 315, 316, 318, 319, 320, 321, 323, 324, 325, 326, 327, 328 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 375, 376, 377, 378, 379, 380, 381, 383, 384, 385, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 438, 439, 440, 441, 442, 443, 444, 445, 446, 448, 449, 450, 451, 452, 453, 454, 456, 458, 459, 460, 461, 462, 463, 465, 467, 468, 469, 470, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 482, 483, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 499, 500, 501, 502, 503, 504, 505,

507, 508, 509, 510, 511, 512, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 575, 576, 577, 578, 579, 580, 581, 582, 584, 585, 586, 587, 588, 589, 590, 591, 592, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 612, 614, 615, 616, 617, 619, 631, 632, 633, 634, 635, 636, 659, 663, 665, 681, 682, 683, 684, 685, 686, 689, 690, 691, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718,

Appellate Panel of the Supreme Court of Kosovo 247, 286, 326, 332,

Appellate Panel of the Special Chamber of the Supreme Court of Kosovo 174, 175, 176, 178, 179, 180, 183, 185, 186, 187, 188, 189, 190, 191, 193, 194, 195, 197, 198, 199, 201, 222, 223, 228, 237, 238, 240, 241, 242, 264, 265, 286, 287, 324, 325, 326, 329, 330, 332, 333, 337, 338, 340, 341, 378, 380, 381, 416, 419, 421, 519, 522, 523, 572,

Applicant's allegations 21, 23, 29, 40, 50, 51, 58, 98, 99, 100, 101, 102, 104, 111, 116, 117, 125, 126, 127, 128, 129, 146, 147, 148, 149, 161, 162, 170, 180, 183, 185, 186, 190, 191, 207, 210, 213, 219, 226, 228, 234, 247, 255, 276, 290, 291, 292, 295, 298, 299, 300, 329, 330, 337, 338, 339, 340, 345, 355, 363, 370, 371, 379, 387, 389, 392, 395, 396, 397, 402, 403, 410, 411, 427, 443, 444, 452, 453, 481, 482, 483, 493, 495, 496, 503, 504, 505, 510, 516, 523, 524, 531, 532, 541, 549, 550, 557, 561, 565, 572, 578, 579, 580, 581, 582, 590, 598, 604, 609, 681, 686, 697, 698, 705, 710,

Authorized party 42, 75, 162, 174, 187, 191, 241, 262, 277, 314, 315, 364, 387, 388, 456, 522, 523, 612, 623, 627, 632, 633, 635, 636, 639, 651, 659, 689, 690,

B

Bodily injury 209,

C

Code of ethic 454, 514, 516,

Conditional release 132, 133, 134, 137, 138, 140, 141,

Complaint 29, 38, 42, 93, 112, 151, 155, 156, 171, 183, 192, 193, 246, 251, 253, 254, 269, 277, 280, 284, 320, 322, 349, 351, 356, 362, 371, 372, 378, 387, 421, 442, 448, 451, 452, 454, 467, 519, 521, 528, 531, 541, 549, 550, 561, 564, 566, 571, 586, 588, 594, 600, 626, 647, 681, 684, 685, 690, 691, 711, 714, 715, 716, 717, 718,

Compensation 66, 67, 70, 72, 74, 77, 79, 83, 85, 89, 95, 98, 104, 105, 107, 112, 115, 117, 118, 143, 144, 146, 147, 154, 178, 182, 184, 188, 209, 212, 213, 225, 226, 249, 276, 294, 296, 297, 298, 327, 328, 329, 330, 336, 337, 408, 409, 420, 451, 467, 469, 470, 472, 535, 537, 538, 539, 548, 552, 555, 556, 557, 558, 487, 598, 602, 603, 607, 608, 609, 711, 713, 717,

Constitutional complaint 13, 18, 23, 26, 81, 83, 120, 132, 157, 174, 204, 215, 222, 231, 237, 244, 246, 251, 294, 332, 351, 356, 358, 367, 381, 392, 399, 406, 415, 423, 431, 438, 448, 454, 475, 485, 491, 499, 521, 531, 524, 527, 545, 561, 566, 569, 575, 603, 693, 706,

Constitutional Review of Judgment 13, 14, 18, 19, 32, 33, 45, 46, 83, 84, 93, 112, 113, 143, 151, 157, 166, 174, 204, 205, 209, 210, 231, 232, 244, 245, 251, 252, 264, 265, 286, 287, 358, 359, 367, 368, 383, 384, 392, 393, 399, 406, 407, 415, 416, 421, 423, 424, 438, 439, 448, 449, 488, 491, 492, 528, 529, 545, 546, 561, 562, 569, 570, 575, 576, 693, 694, 701, 702, 712,

Constitutional Review of Decision 24, 26, 104, 222, 237, 238, 272, 273, 294, 295, 303, 304, 333, 351, 352, 356, 431, 432, 467, 468, 475, 476, 499, 500, 514, 515, 536, 552, 553, 584, 585, 594, 595, 603, 706, 707, 714,

Challenged decision	14, 16, 19, 27, 33, 39, 46, 54, 60, 63, 84, 94, 102, 105, 109, 110, 113, 122, 130, 141, 144, 152, 158, 162, 167, 175, 176, 194, 205, 210, 216, 217, 223, 229, 232, 236, 237, 238, 242, 243, 245, 249, 252, 255, 256, 259, 270, 272, 273, 274, 276, 278, 281, 284, 287, 295, 299, 303, 305, 306, 312, 314, 315, 319, 320, 325, 333, 338, 346, 350, 351, 352, 357, 358, 359, 360, 364, 365, 368, 371, 376, 377, 378, 380, 381, 384, 387, 389, 393, 400, 404, 407, 411, 414, 416, 423, 424, 428, 432, 434, 435, 439, 449, 454, 460, 476, 486, 492, 500, 501, 505, 508, 515, 516, 517, 520, 529, 531, 536, 546, 553, 557, 562, 570, 576, 579, 585, 595, 604, 607, 610, 682, 694, 702, 707, 708, 712, 714,
Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment	387,
Convention on the Rights of the Child	476,
Convention relating to the Status of Refugees	599,
Criminal Code of the Republic of Kosovo	20, 22, 28, 136, 160, 168, 233, 369, 401, 425, 426, 427, 441, 442, 578, 684,
Criminal Procedure Code of Kosovo	16, 21, 124, 126, 130, 136, 372, 386, 390, 426, 685, 686, 691,
Criminal charges	20, 76, 371, 411,
Customs service	351, 353,

D

Deprived of property 420,

E

European Court of Human Rights ("ECtHR") 19, 21, 62, 64, 70, 72, 74, 81, 94, 105, 112,113, 116, 167, 176, 223, 249, 252, 255, 262, 287, 295, 326, 337, 368, 384, 412, 439, 500, 503, 549, 550, 682, 694, 706,

Ex officio 21, 57, 172, 409, 472, 548, 565, 599, 686, 687,

Extraordinary mitigation of punishment 132, 134, 142,

F

Finality and enforceability of decisions 62

G

Grievous bodily harm 26, 29,

H

Hear the witnesses 166, 167, 438,

I

Individual referral 11, 13, 18, 26, 32, 38, 45, 53, 62, 83, 93, 104, 112, 132, 143, 151, 157, 166, 174, 193, 204, 209, 215, 222, 231, 237, 244, 251, 258, 264, 272, 280, 286, 294, 324, 332, 345, 351, 358, 367, 375, 383, 399, 406, 415, 423, 431, 438, 448, 467, 475, 485, 491, 499, 507, 514, 519, 528, 535, 545, 552, 561, 569, 575, 584, 594, 603, 681, 689, 693, 703, 706, 713,

Intervenor status 193, 198, 199, 200, 201, 202,

Institutional referral 303, 456, 612,

Inadmissible referral 32, 38, 304, 215, 258, 280, 345, 485, 713,

Inter alia 24, 62, 66, 68, 71, 77, 91, 101, 110, 125, 130, 141, 188, 218, 219, 254, 269, 289, 292, 297, 321, 322, 338, 361, 362, 370, 389, 461, 465, 483, 497, 505, 531, 532, 537, 538, 540, 541, 559, 581, 587, 622, 628, 630, 635, 636, 638, 639, 640, 641, 645, 668, 674, 683, 684, 691, 710,

Interim measure 18, 20, 24, 25, 38, 39, 40, 41, 42, 43, 98, 112, 113, 118, 119, 157, 159, 164, 165, 176, 178, 196, 222, 224, 229, 230, 237, 239, 240, 242, 243, 264, 266, 270, 271, 332, 334, 337, 342, 343, 344, 423, 424, 429, 430, 458, 461, 463, 464, 465, 466, 519, 520, 521, 522, 523, 524, 525, 526, 527, 615, 616, 661,

International law 202, 310, 370, 637,

International Covenant on Civil and Political Rights and its Protocols

Imprisonment sentence 13, 14, 18, 133, 134, 137, 138, 140, 157, 166, 233, 367, 383, 400, 402, 406, 407, 423, 438,

J

Judicial System 201, 258, 261, 303, 305, 309, 311, 312, 514, 515, 517,

Judge 14, 15, 19, 20, 27, 28, 33, 34, 39, 40, 46, 47, 54, 55, 61, 84, 85, 94, 95, 105, 106, 113, 114, 121, 122, 123, 133, 134, 144, 145, 152, 153, 158, 159, 167, 168, 175, 176, 177, 186, 194, 195, 196, 205, 206, 210, 211, 216, 217, 223, 224, 232, 233, 238, 239, 245, 246, 252, 253, 258, 259, 260, 261, 265,

266, 273, 274, 281, 282, 287, 288, 295, 296, 304, 305, 309, 310, 312, 325, 326, 333, 334, 335, 346, 347, 352, 353, 359, 360, 362, 368, 369, 376, 377, 384, 385, 393, 394, 400, 401, 407, 408, 416, 417, 424, 425, 432, 433, 439, 440, 449, 450, 458, 459, 468, 469, 470, 476, 477, 486, 487, 492, 493, 500, 501, 508, 509, 515, 516, 520, 521, 529, 530, 536, 537, 546, 547, 553, 554, 562, 563, 570, 571, 576, 577, 585, 586, 595, 596, 604, 605, 614, 615, 662, 680, 682, 683, 685, 687, 688, 694, 695, 702, 703, 707, 708, 714, 715, 716,

Judge Rapporteur

15, 17, 20, 25, 28, 31, 34, 37, 40, 44, 47, 52, 55, 61, 64, 65, 82, 85, 92, 95, 96, 103, 106, 111, 114, 119, 122, 123, 131, 135, 142, 145, 150, 153, 156, 159, 165, 168, 173, 176, 177, 192, 195, 196, 203, 206, 207, 208, 211, 214, 217, 221, 224, 230, 233, 236, 239, 243, 246, 250, 253, 257, 263, 266, 271, 274, 279, 282, 283, 285, 288, 293, 296, 302, 305, 307, 323, 326, 331, 334, 335, 344, 347, 349, 350, 353, 357, 360, 366, 369, 374, 377, 382, 385, 391, 394, 401, 405, 408, 414, 417, 422, 425, 430, 433, 437, 440, 441, 447, 450, 459, 460, 466, 469, 470, 474, 477, 484, 487, 490, 493, 498, 501, 506, 509, 513, 516, 518, 521, 527, 530, 534, 537, 544, 551, 554, 560, 563, 568, 574, 577, 583, 586, 593, 596, 602, 605, 611, 615, 616, 661, 683, 692, 695, 703, 705, 708, 712, 715, 719,

Judgment

13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 32, 33, 34, 36, 45, 46, 48, 49, 51, 53, 54, 57, 58, 59, 60, 62, 63, 75, 78, 79, 82, 83, 84, 86, 87, 88, 89, 90, 93, 94, 95, 97, 98, 99, 100, 101, 107, 108, 109, 110, 112, 113, 115, 116, 117, 118, 123, 124, 125, 126, 128, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 147, 148, 149, 151, 152, 154, 155, 157, 158, 159, 160, 161, 162, 163, 166, 167, 168, 169, 171, 172, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 185, 186, 187, 188, 190, 191, 194, 195, 197, 198, 199, 201, 202, 204, 205, 206, 207, 209, 210, 211, 212, 213, 218, 219, 229, 231, 232, 233, 234, 235, 236, 244, 245, 247, 249, 251, 252, 254, 256, 264, 265, 267, 268, 269, 270, 275, 276, 277, 278, 286, 287, 290, 291, 292, 301, 306, 307, 308, 314, 317, 318, 320, 321, 322, 324, 325, 326, 327, 328, 329, 330, 339, 341, 357, 358, 359, 360, 361, 362,

363, 364, 365, 366, 367, 368, 370, 371, 372, 373, 375, 376, 378, 383, 384, 385, 386, 389, 390, 392, 393, 395, 397, 399, 400, 401, 402, 403, 404, 406, 407, 408, 409, 410, 412, 413, 414, 415, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 429, 435, 438, 439, 440, 441, 442, 443, 444, 445, 446, 448, 449, 450, 452, 454, 456, 462, 470, 471, 472, 473, 474, 483, 485, 486, 488, 489, 491, 492, 493, 494, 496, 497, 502, 504, 505, 510, 517, 522, 523, 528, 529, 530, 531, 532, 533, 534, 537, 538, 539, 540, 541, 542, 543, 545, 546, 548, 549, 550, 555, 556, 559, 561, 562, 564, 565, 567, 568, 569, 570, 572, 573, 575, 576, 579, 580, 581, 582, 583, 600, 601, 609, 610, 612, 614, 625, 631, 634, 635, 636, 645, 660, 661, 662, 689, 690, 691, 693, 694, 696, 697, 698, 699, 700, 701, 703, 704, 710,

Jurisdiction of the Constitutional Court 125, 126, 162, 187, 262, 305, 312, 387, 465, 489, 632, 633, 634, 639, 651, 653, 654, 659, 690,

Jurisdiction of ECHR 51,

Jurisdiction of regular courts 118, 256, 421, 532, 543,

L

Lawyer 14, 19, 33, 46, 84, 113, 121, 127, 158, 167, 175, 194, 245, 252, 273, 325, 333, 384, 393, 394, 395, 396, 408, 432, 439, 448, 453, 454, 476, 486, 529, 578, 604, 694, 702, 707,

Law on Administrative Procedures 183, 361,

Law on the Constitutional Court of the Republic of 13, 15, 16, 17, 20, 22, 25, 26, 28, 29, 30, 31, 34, 35, 37, 38, 40, 42, 43, 44, 45, 47, 50, 52, 53, 54, 58, 61, 64, 75, 82, 83, 85, 89, 92, 93, 95, 99, 103, 104, 106, 108, 109, 111, 112, 114, 116, 117, 119, 122, 127, 129, 131, 132, 134, 138, 139, 140, 142, 143, 150, 153, 155, 156, 157, 159, 162, 164, 165,

Kosovo	166, 168, 170, 174, 185, 192, 193, 195, 200, 202, 203, 205, 209, 211, 214, 215, 217, 219, 220, 221, 222, 224, 227, 230, 231, 232, 234, 235, 236, 237, 238, 243, 245, 248, 251, 253, 255, 257, 258, 260, 261, 262, 263, 264, 266, 271, 272, 274, 277, 278, 280, 283, 284, 285, 286, 290, 292, 294, 296, 299, 301, 302, 322, 324, 326, 329, 331, 332, 334, 343, 345, 347, 349, 350, 352, 359, 364, 367, 369, 373, 375, 379, 380, 382, 387, 390, 391, 392, 396, 398, 399, 401, 403, 404, 406, 410, 411, 412, 414, 415, 417, 419, 422, 423, 427, 429, 430, 431, 433, 434, 436, 440, 446, 449, 453, 454, 459, 464, 467, 469, 474, 477, 483, 484, 487, 493, 495, 499, 501, 503, 505, 506, 509, 512, 513, 515, 517, 524, 529, 543, 544, 547, 551, 559, 562, 571, 573, 574, 577, 584, 593, 596, 602, 603, 605, 615, 624, 681, 683, 689, 691, 695, 700, 704, 706, 710, 712, 713, 719,
Law on Contested Procedure	59, 87, 91, 98, 108, 154, 199, 273, 276, 297, 469, 472, 538, 541, 542, 608, 709,
Law on Courts	411, 413, 514,
Law on Execution Procedure	479,
Law on Obligational Relationship	272,
Law on Labor	57, 59, 116, 117, 469, 472, 557, 647, 650,
Law on public procurement	258, 259, 260, 656, 675,
Law on minor offences	356,
Law on red cross	38, 39, 41, 42, 43,
Law on Privatization	77, 291, 339,

Agency of Kosovo

Law on Prevention of Money Laundering and Financing of Terrorism 351,

Legal guardian 482, 630,

Legal Basis 15, 20, 28, 34, 40, 47, 54, 64, 85, 95, 106, 114, 122, 124, 126, 134, 145, 153, 159, 168, 176, 195, 205, 211, 217, 224, 232, 238, 240, 241, 245, 252, 253, 259, 266, 274, 282, 288, 296, 305, 326, 328, 334, 347, 352, 359, 362, 369, 377, 385, 394, 401, 407, 417, 425, 433, 440, 449, 459, 469, 470, 477, 479, 487, 492, 501, 509, 515, 521, 524, 529, 536, 540, 547, 553, 555, 557, 562, 571, 577, 582, 585, 596, 605, 606, 615, 637, 669, 670, 671, 678, 683, 695, 703, 708, 715,

Legal order of Kosovo 220, 311, 340, 381, 436, 473, 518, 565, 592, 670,

Legal Remedies 11, 18, 22, 23, 30, 43, 49, 50, 58, 64, 66, 71, 72, 74, 75, 76, 77, 94, 99, 100, 110, 125, 126, 130, 132, 146, 157, 159, 161, 162, 176, 180, 213, 215, 219, 220, 221, 227, 235, 241, 248, 261, 268, 277, 290, 291, 329, 330, 339, 340, 354, 355, 356, 364, 372, 381, 388, 403, 411, 412, 418, 419, 431, 432, 434, 435, 436, 453, 454, 467, 469, 472, 473, 479, 514, 517, 518, 520, 521, 523, 532, 542, 548, 565, 572, 573, 584, 590, 591, 592, 594, 595, 598, 600, 604, 608, 609, 650, 653, 667, 670, 677, 689, 697, 704, 710, 717,

Legal succession 93,

M

Money laundering 351, 353, 354,

Mutatis mutandis 51, 60, 75, 81, 91, 92, 101, 110, 118, 130, 148, 220, 221, 229, 236, 243, 249, 256, 257, 270, 278, 292, 301, 317, 341, 365, 381, 389, 390, 398, 413, 421, 429, 436, 446, 454, 455, 474, 483, 497, 505, 518, 532, 543, 559, 567, 589, 592, 610, 690, 712,

Manifestly ill-founded referral 18, 45, 53, 83, 93, 104, 112, 120, 132, 143, 157, 166, 174, 193, 231, 237, 251, 264, 272, 286, 294, 303, 324, 332, 351, 358, 381, 392, 399, 406, 415, 423, 475, 491, 499, 507, 528, 535, 545, 552, 561, 575, 594, 603, 681, 693, 706,

Mitigating circumstances 160, 402, 406, 410, 426, 428,

N

Non-Governmental Organization (NGO) 112, 113, 262,

O

Ombudsperson 71, 187, 303, 305, 311, 312, 460, 465, 616, 639,

Offence 18, 20, 26, 28, 49, 120, 124, 136, 160, 233, 234, 351, 354, 370, 371, 385, 402, 408, 409, 423, 441, 445, 577, 578, 579, 685, 686, 687,

Out of time referral 13, 26, 132, 209, 367, 375, 448, 569, 701,

Organized crime 132, 136, 199, 577, 579,

P

Passive legitimacy 83, 87, 93, 97, 103, 392, 393, 395,

Premature referral 332,

Prima facie 18, 22, 24, 25, 38, 43, 53, 55, 56, 57, 59, 90, 109, 110, 117, 119, 157, 162, 164, 171, 185, 222, 229, 230, 231, 235, 242, 248, 255, 269, 271, 277, 284, 291, 292, 299, 343, 345, 350, 355, 359, 365, 388, 396, 399, 403, 420, 428, 429, 444, 464, 465, 481, 483, 496, 503, 505, 511, 535, 542, 550, 557, 566, 581, 603, 610, 611, 698,

Procedure of Constitutional Court 13, 15, 17, 18, 20, 22, 24, 25, 28, 29, 30, 31, 32, 35, 36, 40, 42, 43, 45, 47, 50, 52, 53, 54, 55, 58, 59, 60, 61, 64, 73, 75, 82, 83, 85, 89, 95, 99, 100, 106, 109, 112, 114, 118, 120, 122, 127, 128, 129, 131, 134, 135, 138, 139, 140, 142, 145, 148, 153, 155, 159, 166, 168, 172, 195, 205, 208, 211, 224, 246, 377, 433, 629,

Prohibition of discrimination 64, 69, 72, 73, 76, 78, 99, 127, 166, 264, 267, 269, 289, 310, 313, 378, 397, 451, 453, 596, 601, 602, 648, 652, 675, 676, 677, 678, 679, 680, 697, 698, 699,

Provisional Criminal Code of Kosovo (PCCK) 28, 124, 441, 685, 686, 691,

R

Ratione Temporis 316, 681,685, 690, 691,

Ratione Materia 193, 203, 258, 261, 262, 303, 316, 462, 465, 631,

Right to property 45, 46, 83, 104, 174, 185, 188, 207, 222, 249, 286, 415, 419, 432, 491, 584, 648, 693, 706,

Res Judicata 286, 290, 291, 292, 314, 522,

Retrial 16, 22, 50, 57, 87, 115, 123, 154, 155, 212, 233, 275, 328, 338, 419, 471, 503, 510, 548, 608,

Temporary measure 459, 463, 615,

Release on bail 575,

Rights of 475, 476,

children	
Revision	48, 49, 57, 78, 84, 86, 87, 88, 90, 92, 93, 94, 98, 100, 104, 107, 109, 115, 116, 143, 144, 147, 152, 154, 209, 210, 212, 213, 251, 254, 256, 272, 273, 275, 277, 294, 295, 298, 300, 363, 392, 393, 395, 471, 475, 480, 483, 491, 494, 496, 499, 500, 503, 504, 510, 528, 531, 532, 535, 538, 539, 540, 541, 542, 543, 545, 546, 549, 556, 561, 565, 603, 607, 609, 693, 697, 699, 701, 703, 716,
Right of Access to Public Documents	346, 453,
Right to pension	96, 104, 106, 107, 108, 109, 110, 113, 116, 143, 144, 146, 147, 176, 209, 212, 227, 274, 275, 320, 334, 336, 362, 465, 499, 535, 545, 547, 548,
Right to marriage	49, 475, 476,
Rights of the accused	18, 19, 21, 22, 23, 356, 399, 400, 402,
Right of access to public document	346, 453,
Ruling/Decision	15, 16, 17, 18, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 108, 110, 114, 116, 118, 119, 120, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 135, 139, 140, 142, 149, 153, 155, 163, 164, 166, 168, 171, 177, 178, 189, 190, 195, 195, 196, 197, 198, 201, 202, 203, 205, 208, 211, 213, 214, 217, 221, 223, 224, 226, 228, 230, 233, 236, 237, 238, 239, 240,

241, 242, 243, 244, 246, 247, 249, 250, 252, 260, 262, 266, 269, 272, 273, 274, 275, 276, 277, 278, 282, 284, 286, 289, 290, 291, 292, 295, 297, 298, 299, 300, 301, 304, 305, 306, 308, 315, 318, 319, 324, 326, 331, 334, 335, 336, 337, 338, 340, 342, 346, 347, 350, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 365, 369, 372, 373, 377, 380, 382, 383, 385, 388, 389, 390, 394, 395, 397, 398, 400, 402, 403, 404, 406, 408, 409, 414, 426, 428, 430, 431, 432, 434, 435, 436, 440, 443, 445, 447, 450, 452, 453, 454, 459, 464, 466, 467, 469, 471, 472, 473, 474, 476, 478, 479, 481, 483, 485, 487, 490, 493, 499, 501, 502, 503, 504, 505, 509, 510, 512, 514, 516, 520, 526, 530, 531, 532, 538, 540, 541, 542, 544, 551, 554, 555, 556, 559, 567, 577, 587, 588, 589, 596, 600, 607, 615, 665, 687, 708, 713, 714, 716, 718, 719,

S

Session 15, 17, 36, 43, 82, 230, 236, 243, 250, 271, 278, 297, 306, 312, 314, 315, 324, 327, 328, 342, 357, 404, 418, 426, 438, 441, 442, 452, 460, 463, 472, 506, 512, 518, 551, 560, 574, 602, 611, 629, 630, 660, 693, 696, 699, 705, 717,

Special Prosecution Office of the Republic of Kosovo

Special Chamber of the Supreme Court

Socially-owned enterprise 65, 67, 73, 74, 215, 216, 224, 225, 239, 264, 266, 269, 327, 328, 346, 347, 375, 378, 522, 524, 569, 588,

State Prosecutor 16, 27, 28, 29, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 160, 233, 234, 309, 310, 311, 386, 402, 409, 410, 441, 442, 443, 471, 479, 538, 539, 541, 577, 578, 579, 681, 684, 685, 686, 687, 688, 689, 691, 706,

U

Universal Declaration of Human Rights 95, 205, 207, 305, 311, 312, 338, 340, 440, 444

W

Work contract 55, 56, 60, 96, 114, 115, 116, 118, 145, 147, 149, 251, 253, 254, 276, 378, 488, 552, 554, 555, 558, 563, 564, 567,

Contract on life endowment 45, 47 48, 49, 50,

Sale contract 65, 78, 177, 196, 204, 206, 291, 327, 431, 433, 493, 693, 695, 696, 699,

War crime 367, 369, 386,

INDEX OF ARTICLES OF THE CONSTITUTION

Article	Title/Name	Decision/Page number
	CHAPTER I	
	BASIC PROVISIONS	
1	**Definition of State**	305,
3	**Equality Before the Law**	11, 176, 180, 181, 201, 308, 400, 402, 476, 601, 612, 615,
4	**Form of Governance and Separation of Power**	58,
7	**Values**	195, 199, 201, 647, 648, 694,
10	**Economy**	40, 41,
18	**Ratification of International Agreements**	202, 310, 461, 636,
	CHAPTER II	
	FUNDAMENTAL RIGHTS AND FREEDOMS	
21	**General Principles**	
22	**Direct Applicability of International Agreements and Instruments**	121, 127, 255, 310, 312, 460, 476,
24	**Equality Before the Law**	40, 41, 53, 58, 64, 72, 93, 94, 99, 100, 120, 121, 174, 176, 188, 192, 195, 199, 201, 231, 232, 234, 237, 251, 252, 255, 256, 264, 265, 269, 273, 276, 291, 303, 305, 311, 312, 337, 340, 375, 377, 379, 381, 399, 400, 402, 423, 424, 427, 428, 431, 432, 438, 448, 453, 456, 458, 467, 469,

		472, 475, 520, 523, 545, 550, 551, 569, 570, 572, 594, 595, 601, 602, 609, 612, 614, 637, 647, 659, 660, 661, 662, 665, 673, 675, 693, 694, 699,
27	**Prohibition of Torture, Cruel, Inhuman Or Degrading Treatment**	346,
29	**Right to Liberty and Security**	232, 234, 576, 580,
30	**Rights of the Accused**	19, 21, 22, 356, 400, 402,
32	**Right to Legal Remedies**	64, 72, 76, 94, 99, 100, 125, 157, 159, 161, 162, 176, 180, 356, 432, 434, 467, 469, 472, 520, 521, 594, 595, 602, 603, 604, 608,
33	**The Principle of Legality and Proportionality in Criminal Cases**	400, 402,
34	**Right not to be Tried Twice for the Same Criminal Act**	58,
37	**Right to Marriage and Family**	476,
41	**Right of Access to Public Documents**	346, 453,
45	**Freedom of Election and Participation**	305, 312, 594, 595, 600,
49	**Right to Work and Exercise Profession**	34, 35, 40, 94, 99, 113, 149, 255, 273, 281, 393, 397, 486, 488, 532, 533, 553, 556, 562, 566,
50	**Rights of Children**	476,

53	**Interpretation of Human Rights Provisions**	24, 64, 76, 176, 180, 486, 489,
55	**Limitation on Fundamental Rights and Freedoms**	453,

CHAPTER III

RIGHTS OF COMMUNITIES AND THEIR MEMBERS

60	**Consultative Council for Communities**	346, 651, 654,

CHAPTER IV

ASSEMBLY OF THE REPUBLIC OF KOSOVO

80	**Adoption of Laws**	318,

CHAPTER VI

GOVERNMENT OF THE REPUBLIC OF KOSOVO

101	**Civil Service**	87, 451, 452, 456, 457, 561, 563, 564, 567, 612, 613, 628, 647, 649, 650, 675,

CHAPTER VII

JUSTICE SYSTEM

102	**General Principles of the Judicial System**	191, 305, 312, 515,
103	**Organization and Jurisdiction of Court**	305, 312,
106	**Incompatibility**	347,

CHAPTER VIII

CONSTITUTIONAL COURT

113.1	**Jurisdiction and Authorized Parties**	162, 262, 387, 456, 462, 612, 632, 633, 639, 651, 659,
114	**Composition and Mandate of the Constitutional Court**	305, 312,
116	**Legal Effect of Decisions**	35, 35, 42, 485, 490,

CHAPTER XIV

TRANSITIONAL PROVISIONS

162	**Effective Date**	
159	**Socially Owned Enterprises and Property**	347,

VIOLATION OF ARTICLES 31, 54 AND 46 OF THE CONSTITUTION

31	**Right to Fair and Impartial Trial**	64,
46	**Protection of Property**	64,
54	**Judicial Protection of Rights**	64,