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

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

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January – June 2016

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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Foreword

I have the special honor and pleasure, in the capacity of the President of the Court, to write this foreword for the 6th 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 and fundamental human rights and freedoms. 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 of the deputies of the Assembly of Kosovo for a constitutional review, as regards its substance and the procedure followed by the Assembly of Kosovo on the election of the President of the Republic of Kosovo. The deputies- the Applicants requested the Court to assess whether Article 86 [Election of the President], paragraphs 4 and 5 of the Constitution of the Republic of Kosovo have been violated.

The Court has also rendered two other important decisions related to individual referrals. From the view of constitutional judiciary, the issues of legal validity of the final decisions, the legal remedies and the right to a reasoned decision as a component of a general right to a fair trial, have been addressed.

It is worth reiterating 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 closely 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 useful 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 publishing the Bulletin, for which the Court is grateful.

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

KI63/15, Applicant Bedri Haxhi Halili from Vushtrri who requests Constitutional Review of Decision 508/15, of the Disciplinary Committee of the Municipal Islamic Community in Vushtrri, of 4 May 2015

KI63/15, Resolution on inadmissibility, of 18 December 2015, published on 28 January 2016.

Key words: individual referral, constitutional review of Decision of the Disciplinary Committee of the Municipal Islamic Community, inadmissible Ratione materiae.

The applicant filed the request pursuant to Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo.

On an unspecified date, before the Disciplinary Committee of the municipal Islamic Community in Vushtrri was initiated the disciplinary procedure against the Applicant. This procedure was finalized by the Decision [508/15] of the Disciplinary Committee, of 4 May 2015, whereby it was decided that the Applicant's salary be decreased for a defined period.

The Applicant requests from the Court to find violations of the rights guaranteed by constitution in the above mentioned Decisions of the Disciplinary Committee.

The Court defines that in order that a Referral is compatible *ratione materiae* with the Constitution, the right invoked by the Applicant, must be protected by the Constitution. As the Applicant's Referral is related to the Decision of the Disciplinary Committee of the Municipal Islamic Community in Vushtrri, this Referral is incompatible *ratione materiae* with the Constitution, because the internal organization of the religious communities is not under the jurisdiction of the Constitutional Court. It follows that the Applicant's Referral is incompatible *ratione materiae* with the provisions of the Constitution.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI63/15
Applicant
Bedri Haxhi Halili
Constitutional review of Decision 508/15 of the Disciplinary Committee of the municipal Islamic Community in Vushtrri, of 4 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 Applicant is Mr. Bedri Haxhi Halili from Vushtrri (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision 508/15 of the Disciplinary Committee of the municipal Council of Islamic Community in Vushtrri (hereinafter: the Disciplinary Committee), of 4 May 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged decision. The Applicant does not specifically mention the Articles of the Constitution, which 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 25 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. KI63/15 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI63/15 appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.

7. On 28 July 2015, the Court informed the Applicant about the registration of the Referral.

8. On 18 December 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. On an unspecified date, before the Disciplinary Committee of the municipal Islamic Community in Vushtrri was initiated the disciplinary procedure against the Applicant.

10. This procedure was finalized by Decision 508/15 of the Disciplinary Committee, of 4 May 2015, whereby it was decided that the Applicant's salary be decreased for 20% for the next 9 months.

Applicant's allegations

11. The Applicant requests the Court that in the abovementioned decisions of the Disciplinary Committee finds violation of the rights guaranteed by the Constitution.

Relevant legal provisions

UNMIK Regulation No. 02/31
On freedom of religion in Kosovo

Article 5.
Religious neutrality

[...]
5.2. Religious communities shall be separated from public authorities.
[...].

Article 7.
Self-Determination and Self-Regulation

[...]
7.2. Religious communities shall independently regulate and administer their internal organization.
[...].

Assessment of the admissibility of the Referral

12. 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 Rules of Procedure.

13. 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."

14. The Court also refers to Article 39.2 of the Constitution, which provides:

Article 39 [Religious Denominations]

"2. Religious denominations are free to independently regulate their internal organization, religious activities and religious ceremonies."

15. As regards the present Applicant's Referral, the Court refers to Rule 36 paragraph (3) item (a) and (e) of the Rules of Procedure, which provides the following:

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

(a) the Court does not have jurisdiction in the matter;

[...]

(e) the Referral is incompatible ratione materiae with the Constitution;

16. The court is obliged to examine whether it has jurisdiction *ratione materiae* in each each stage of the proceedings. The compatibility with the Constitution and international instruments which are an integral part of the Constitution in accordance with Article 53 of the Constitution *ratione materiae* of a Referral stems from the core competence of the Court. In order that a Referral is compatible *ratione materiae* with the Constitution, the right invoked by the Applicant, must be protected by the Constitution.

17. As the Applicant's Referral is related to the Decision of the Disciplinary Committee of the municipal Islamic Community in Vushtrri, this Referral is incompatible *ratione materiae* with the Constitutional Court, because the internal organization of the religious communities is not under the jurisdiction of the Constitutional Court. It follows that the Applicant's Referral is incompatible *ratione materiae* with the provisions of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 39. 2 and 113.7 of the Constitution, and Rules 36 (3) (a) and (e) of the Rules of Procedure, in the session held on 18 December 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**

Altay Suroy Arta Rama-Hajrizi

KI135/14, Applicant IKK Classic, Constitutional Review of Judgment E. Rev. No. 21/2014, of the Supreme Court of Kosovo, of 8 April 2014.

KI135/14, Judgment approved on 10 November 2015 and published on 9 February 2016.

Key words*: individual referral, civil procedure, rights of third parties, subrogation, unreasoned decision, violation of fair and impartial trial.*

The Supreme Court of Kosovo had dismissed previous Decisions of courts of lower instances, thus denying to the Applicant the right to subrogation of money that the Applicant used for the treatment of its insured person.

The Applicant appealed at the Constitutional Court mainly due to violation of right to property and right to fair and impartial trial.

The Constitutional Court in compliance with its mandate, the Referral of the applicant, assessed only in terms of respecting the constitutional procedure. The Constitutional Court ascertained that the Supreme Court violated the right of the Applicant to fair and impartial trial because it did not provide sufficient explanation for decisive facts of the considered case. The Constitutional Court did not ascertain that on this occasion the right to property of the Applicant was violated but it only limited itself in the assessment of regular judicial process.

Case KI135/14 Dissenting Opinion

Applicant
IKK Classic
Constitutional review of Judgment E. Rev. Nr. 21/2014 of the Supreme Court of Kosovo of 8 April 2014

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

I respectfully dissent from the judgment and conclusions of the majority with respect to this Referral.

The majority decided that the Supreme Court of Kosovo in its judgment, E. Rev. No. 21/2014, dated 8 April 2014, violated the Applicant's right to a fair trial guaranteed by Article 31 of the Constitution of the Republic of Kosovo, hereinafter referred to as the "Constitution," and Article 6, paragraph 1, of the European Convention on Human Rights, hereinafter referred to as the "Convention," by concluding that the decision of the Supreme Court was not reasoned with respect to why, as a matter of law, the Supreme Court rejected the Applicant's claim for re-imbursement from Sigma Insurance Company for the money that Applicant paid to it's insured, hereinafter referred to as "DH," pursuant to a contract of insurance it had with DH. The majority concludes that the Supreme Court gave an inadequate answer in support of its decision thereby denying the Applicant the right to a fair trial pursuant to Article 31 of the Constitution and Article 6 of the Convention.

> Article 31, paragraph 2 of the *Constitution* provides:
>
> *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*
>
> Article 6, paragraph 1 of the Convention *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. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

It is generally accepted that both Article 31 of the Constitution and Article 6 of the Convention require that a court give a reason or reasons for its decision. In the instant case the Supreme Court of Kosovo in its decision gave a reasoned decision by stating:

> *... the courts of lower instance have errounesly approved as grounded the claimant's statement of claim due to the fact that the insured of the claimant was indemnified by the respondent for the contested damage, based on the agreement of 03.02.2009 in the amount of €2.729. In this agreement in Article 3 the injured, namely the injured representative stated freely that with payment of the amount mentioned above all claims for this damage current and the future ones, regarding the case that is the subject of this agreement towards the insurance companies SIGMA in Kosovo the driver and the owner of vehicle that was insured in this insurance company and towards all other persons were completely fulfilled and there is no further financial claim towards this insurance company regarding this legal matter for compensation of damage. The respondent pursuant to Article 940 of the LOR was obliged to compensate to the insured of the claimant the damage and it is indisputable that after concluding the agreement mentioned above, the respondent paid for the damage. Likewise, the insured of the claimant pursuant to Article 941 of the LOR according to the guilt of the insured of the respondent was entitled to directly requests from the respondent the compensation of damage. For these reasons the Supreme Court of Kosovo finds that the revision of the respondent is grounded since for the traffic accident mentioned above where was injured the insured of the claimant Driton Hasanmetaj the respondent fulfilled the obligation of indemnification the payment of €2.729,00, for which the injured as it was said above has concluded directly with the respondent the indemnity agreement. From this ground, the Supreme Court of Kosovo finds that the claimant cannot claim regress of the debt although it is indisputable that the claimant paid the contested debt to the injured Driton Hasanmetaj as its insured.*

In this case the Applicant, Ikk, as an insurance company, brought a legal claim against Sigma Insurance Company for re-imbursement of the €18. 935.36 it had previously paid to DH, it's insured, for the medical expenses DH allegedly incurred as a result of an automobile accident with a person insured by Sigma where it was claimed that Sigma's insured person was legally responsible for the accident and the injuries that DH suffered. Sigma, on behalf of its insured, the other party involved in the automobile accident, negotiated with DH and reached an agreement with DH to pay DH € 2. 729,00 as a full and complete settlement for all injuries that DH suffered as a result of the accident. As an express condition of this settlement agreement, DH agreed that Sigma's payment of € 2. 729 fully and completely satisfied any legal obligation that Sigma or Sigma's insured had towards DH as a result of the accident. Sigma had no contractual or legal obligation to the Applicant insurance company. Applicant, however, brought a legal claim against Sigma for re-imbursement of all of the money that it had paid to DH, its insured. The Supreme Court of Kosovo in dismissing Applicant's claim reasoned that Sigma had no legal obligation to the Applicant and that Sigma could legally rely upon it's settlement agreement with the DH as a legal bar to it having to pay any more money to either DH or the Applicant. It effectively reasoned that to decide in any other manner would result in not honoring the valid legal settlement that Sigma had negotiated with DH whereby it gave up it's right to a trial on the merits of the claim against its insured both with respect to who was responsible for the accident and the nature and extent of the DH's injuries. It implied that to rule in any other manner would have required Sigma to be responsible for all of the money that Applicant paid to it's insured without any opportunity for Sigma to contest whether those payments to Applicant's insured were lawfully appropriate or in the lawfully appropriate amount. The Supreme Court by it's decision implied that the Applicant's claim could be made

against DH, it's own insured, not Sigma, for re-imbursement of the € 2. 729 that DH received from Sigma.

Nonetheless, the majority concludes that the Supreme Court's judgment was not reasoned because it arguably did not explain the following legal issues:

1. Whether the extra-judicial agreement struck between SIGMA and the insured DH barred the Applicant from the right to compensation;
2. How the compensation paid for by SIGMA to the insured DH absolved the former to pay compensation to the Applicant as well;
3. How the extra-judicial agreement struck between SIGMA and DH can affect the rights of the Applicant-where it is clear-that the latter was not party to that agreement;
4. In what way the payment of €2.729,00 paid to the insured DH supplants the medical expenses in the value of € 18. 985, 36 paid for by the Applicant; and,

(v) If not by SIGMA, then, who must ultimately reimburse the Applicant the amount it paid for medical costs of its insured DH.

A careful reading of the Supreme Court's decision will demonstrate that the Supreme Court of Kosovo:

(1) did not expressly address question # 1, but it implied that Applicant was not barred from making a legal claim against DH, it's own insured;
(2) clearly answered questions # 2 and 3 by reasoning that Sigma had no legal obligation to the Applicant; and,
(3) never answered question # 4 because it was not asked to answer it, and it had never been proven that any one was required to re-imburse the Applicant for the voluntary payments that the Applicant made to DH, it's insured.

Answers to all of these questions are legal in nature requiring a legal interpretation of the law of Kosovo, not the Constitution. The Supreme Court of Kosovo, not the Constitutional Court, is the final interpreter of Kosovo law. The Supreme Court of Kosovo in this case gave a detailed legal answer for its conclusions and judgment. Neither Article 31 of the Constitution nor Article 6 of the Convention require more of the Supreme Court. Although, one may question the legal reasoning of the Supreme Court in this judgment, there is no question that the Supreme Court gave a reason for it's conclusions and judgment in this case. Neither Article 31 of the Constitution nor Article 6 of the Convention require more. Therefore, there is no evidence that Applicant's constitutional rights to a fair trial were violated.

Respectfully submitted,

Robert Carolan

Judge

JUDGMENT

in
Case KI135/14
Applicant
IKK Classic
Constitutional review of
Judgment E. Rev. No. 21/2014 of the Supreme Court of Kosovo
of 8 April 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 is submitted by the insurance company IKK Classic (hereinafter, the Applicant) represented by lawyers Mr. Besnik Nikqi and Mr. Arianit Nikqi from Prishtina.

Challenged decisions

2. The Applicant challenges Judgment E. Rev. No. 21/2014 of the Supreme Court of Kosovo of 8 April 2014, which was served upon it on 2 June 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment of the Supreme Court of Kosovo, which allegedly violated namely its right to fair and impartial trial.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 3 September 2014, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 7 October 2014, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

7. On 22 October 2014, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.

8. On 13 and 18 February 2015, the Applicant submitted additional documents to the Court.

9. On 5 May 2015, the Court sent a copy of the Referral to the Insurance Company "SIGMA".

10. On 25 May 2015, the Insurance Company "SIGMA" submitted documents with the Court.

11. On 29 June 2015, Judge Arta Rama-Hajrizi was appointed as member of the Review Panel to replace Judge Enver Hasani, who ended his mandate on 26 June 2015.

12. On 10 November 2015, the Review Panel deliberated on the report of Judge Rapporteur and recommended to the Court the admissibility of the Referral.

Summary of facts

13. On 24 November 2008, DH, the insured of the Applicant, suffered grave injuries in a traffic accident caused by BL holder of an insurance at the Insurance Company "SIGMA" in Prishtina (hereinafter, SIGMA)

14. D. H. received medical treatment in the Federal Republic of Germany at an amount of 18.985,36 Euro, which was paid for by the Applicant.

15. On an unspecified date, the Applicant requested SIGMA to be compensated for the above amount.

16. On 3 February 2009, SIGMA and DH reached an extra-judicial agreement, whereby the latter was compensated by SIGMA for an amount of 2,729 Euro. Based on this agreement, SIGMA considered that it had fulfilled all of its obligations regarding the payment of compensation for the damage caused by the traffic accident of 24 November 2008 including the amount of 18.985,36 Euro paid by the Applicant as the insurance company of DH.

17. The Applicant and SIGMA did not reach an agreement as to the amount paid by the Applicant for the medical treatment DH received in Germany.

18. On 10 November 2011, the Applicant filed a lawsuit against SIGMA with the Commercial District Court in Prishtina, requesting reimbursement of the amount of 18.985,36 Euro. The Applicant argued that SIGMA had to reimburse the medical expenses for the treatment of DH, based on Rule 3 of the Rules on Compulsory Third Party Liability Motor Vehicle Insurance of the Central Banking Authority of Kosovo (hereinafter, CBK). The Applicant further argued that it was entitled to directly request compensation from SIGMA, since DH lacked active legitimacy to sign the extra-judicial agreement of 3 February 2009. In the Applicant's view, this agreement only concerned DH and not the

Applicant whereas the compensation requested was based on payments made in connection with the injuries and the repercussions stemming therefrom.

19. On 5 December 2011, the SIGMA replied that it had fulfilled its obligations (the payment of material and non-material damage) to DH based on the extra-judicial agreement of 3 February 2009, and that the Applicant's lawsuit had to be refused as unfounded.

20. On 15 December 2011, the District Commercial Court in Prishtina (Judgment I. C. nr. 334/2011) approved the lawsuit of the Applicant and ordered SIGMA to pay the amount of 18.985,36 Euro with annual interests at the rate of 3.5 % from the day of the service of the judgment.

21. The District Commercial Court, *inter alia*, reasoned:

> *"The respondent* [KS SIGMA] *did not compensate the plaintiff* [Applicant] *based on the pretext that all obligations to the plaintiff were fulfilled via agreement (3 February 2009) and the injured DH was indemnified. The respondent did not set forth proof that it has fulfilled its obligations to the plaintiff, and that, it has compensated the plaintiff as to its request which is an obligation deriving from the motor liability insurance. From the administrated proof it is verified that the injured party was compensated and that the costs were borne by the plaintiff. The plaintiff has produced receipts for all individual costs borne by it. It results that there is a liability for the injury incurred by the insured of the respondent KS SIGMA and insurance cover on the grounds of motor liability insurance contracted with the respondent. This injury was not compensated and the respondent KS SIGMA has not made indemnification.*
>
> *In a regular extra-judicial procedure the injured DH was compensated by the respondent based on the insurance policy. This entitlement is foreseen by Rule of CBK "on Motor Liability Insurance" based on facts and proof a direct request for compensation was sent to the respondent by the injured DH and the plaintiff. The respondent has replied that it has fulfilled all of its obligations to pay for – material and non-material- damage to the injured DH based on the extra-judicial agreement. The respondent does not dispute the fact that the insured of the plaintiff has sustained injuries and the accident was caused with the fault of the insured of the respondent KS SIGMA. It results that motor liability insurance offers insurance cover and liability for the injury incurred to the third parties property or persons. In the concrete case the insurance cover is regulated by Rule 3 of CBK. Lastly, from the adduced proof it results that the lawsuit of the plaintiff is grounded and that it is entitled to compensation based on the motor liability insurance".*

22. In an unspecified date, SIGMA filed an appeal with the Court of Appeal of Kosovo alleging essential procedural violation, erroneous and incomplete assessment of the factual situation and wrong application of the substantive law.

23. On 11 November 2013, the Court of Appeal of Kosovo rejected as ungrounded the appeal of SIGMA and upheld the judgment of the District Commercial Court in Prishtina.

24. The Court of Appeal of Kosovo inter alia reasoned:

> *The damage for claimant constitutes all what it had to pay to its insured based on the provisions of his country, because the insured realizes the right from health and*

pension insurance pursuant to the provisions of the country where he works. When the claimant suffered and paid those expenses then the first instance court rightly approved the statement of claim for the paid amount of costs which the claimant documented with evidence and pursuant to Article 939 of LOR the amount of damage is set according to the provisions of that country, based on which the insured of the claimant is entitled to realize, while the insurer [Applicant] *is entitled to regress for the made payments.*

For the reasons above the court considers the submissions of the respondent from the appeal related to the lack of active legitimacy of claimant as ungrounded due to the fact that the claim was not filed by the injured in the traffic accident of 24.11.2008, but IKK Classic (Applicant) *which paid in entirety the costs of medical treatment of the injured so that it could not consider in any case that the respondent* (SIGMA) *has concluded the case of indemnification for the accident of 24.11.2008 with the payment of the amount € 2.729.00 .*

25. On 4 March 2014, SIGMA filed with the Supreme Court a request for revision alleging, inter alia, essential violation of the contested procedure and wrong application of the substantive law. SIGMA further alleged that Article 2 of CBK Rule 3 does not foresee compensation rights for the foreign Insurance Companies and that, according to Article 948 of the LOR, the Insuring Company cannot claim compensation against third parties because that right rests with the insured. SIGMA concluded that it fulfilled its obligations to the insured DH for material and non-material damage, and that foreign Insurance Companies would have compensation rights vis-à-vis Kosovo Insurance Companies only via bilateral agreement between the Republic of Kosovo and the State of the Foreign Insurance Company.

26. On 8 April 2014, the Supreme Court (Judgment E. Rev. no. 21/2014) accepted as grounded the request of SIGMA for revision and changed the previous judgments and rejected the request of the Applicant to oblige SIGMA to pay, in the name of regressive debt, the amount of 18. 985, 36 euro.

27. The Supreme Court reasoned:

"the courts of lower instance have erroneously approved as grounded the claimant's (Applicant) *statement of claim due to the fact that the insured of the claimant (DH) was indemnified by the respondent for the contested damage, based on the agreement of 03.02.2009 in the amount of €2.729. In this agreement in Article 3 the injured, namely the injured representative stated freely that with payment of the amount mentioned above all claims for this damage current and the future ones, regarding the case that is the subject of this agreement towards the insurance companies SIGMA in Kosovo the driver and the owner of vehicle that was insured in this insurance company and towards all other persons were completely fulfilled and there is no further financial claim towards this insurance company regarding this legal matter for compensation of damage. The respondent pursuant to Article 940 of the LOR was obliged to compensate to the insured of the claimant the damage and it is indisputable that after concluding the agreement mentioned above, the respondent paid for the damage. Likewise, the insured of the claimant pursuant to Article 941 of the LOR according to the guilt of the insured of the respondent was entitled to directly request from the respondent the compensation of damage. For these reasons the Supreme Court of Kosovo finds that the revision of the respondent is grounded since for the*

traffic accident mentioned above where was injured the insured of the claimant the respondent fulfilled the obligation of indemnification the payment of €2.729,00, for which the injured as it was said above has concluded directly with the respondent the indemnity agreement. From this ground, the Supreme Court of Kosovo finds that the claimant cannot claim regress of the debt although it is indisputable that the claimant paid the contested debt to the injured as its insured".

The Law

Rule 3 on Amending Rule on Compulsory Third Party Liability Motor Vehicle Insurance

Section 2
Insurance Sums – Limitation of Insurance Cover

The liability of an insurance company arising from Third Party Liability Motor Vehicle Insurance (hereinafter, CTPL insurance) shall be limited by the compulsory minimum sum insured being in force at the date of loss occurrence, unless a higher sum insured is agreed in the insurance contract.

The compulsory maximum sum insured per insurable event, respectively compulsory aggregate maximum sums, which must be contracted to the CTPL insurance, are:

a. In case of death, bodily injury and affected health per event;
- per person for buses and motor vehicles carrying dangerous goods EURO 100,000
Aggregate for buses and motor vehicles carrying dangerous goods EURO 1,000,000
- per person for all other motor vehicles EURO 100,000
Aggregate for all other motor vehicles EURO 300,000

b. In case of damage to property;
- per claim for buses and motor vehicles carrying dangerous good EURO 100,000
Aggregate for buses and motor vehicles carrying dangerous good EURO 200,000
- per claim for other motor vehicles EURO 50,000
Aggregate for other motor vehicles EURO 100,000

In case of accident involving several motor vehicles, the total insured sums of CTPL Insurance of the vehicles engaged in the same accident will be applied.

If there are several claimants and total indemnity exceeds the above-mentioned minimum insured sums, the rights of the claimants towards insurance company shall be reduced proportionately.

The retirement and disability pension fund, the health insurance fund and insurance companies dealing with (compulsory and voluntary) health, pension or similar types of life, health, accident, disability or property insurance that are suffered to pay benefits in accordance with their respective pension, compensation or insurance contracts are entitled to submit their recourse claims only after settling of all claims arising from respective insured case.

CTPL insurance maximum sums under paragraph 1 shall be, when needed, determined and changed by the CBAK.

The Law on Obligational Relations (SFRY) on the relevant parts reads:

TRANSFER OF RIGHTS OF THE INSURED OF THE PERSON RESPONSIBLE TO THE INSURER (SUBROGATION)

Article 939

With the payment of compensation from the insurance provider pass, according to the law, up to the amount of compensation paid, all rights of the insured against the person that is responsible for the damage.

If by the fault of the insured this transfer of rights to the insurer is made impossible, in whole or in part, the insurer is discharged from liability to the extent of their corresponding obligation to the insured.

Transfer of rights from the insured to the insurer cannot be done to the detriment of the insured, so if the compensation of the insured by the insurer for any cause whatsoever is less than the damage incurred, the insured has the right to be paid the remainder of the compensation from the property of the responsible person before the rest of the insurer's request on the basis of the rights that were transferred to it.

Exceptionally from the rules on the transfer of rights of the insured to the insurer, these rights are not transferred to the insurer if damage is caused by a person-next of kin-to the insured, or the person for whose behavior the insurer is responsible, or who lives with him in the same household, or the person who is an employee of the insured, except if these people have willfully caused the damage.
However, if one of the persons mentioned in the preceding paragraph has been insured from liability, the insurer may demand compensation from his insurer of the amount paid to the insured.

LIABILITY INSURANCE
The responsibility of the insured

Article 940

In case of liability insurance, the insurer is liable for the damage borne by the insured only if the third injured person seeks compensation for it.
The insurer covers within the amount of insurance costs on the responsibility of the insured.

The personal rights of the injured and direct indictment

Article 941

In case of liability insurance, the injured person may demand compensation directly from the insurer - for the harm suffered- by the event for which the insurer is liable, but not more than up to the amount of the liability of the insurer.
The injured person from the moment when the insured event occurred has the personal right to compensation by insurance, hence any change made later to the rights of the insured vis-à-vis the insurer does not affect the right of the victim to compensation.

Comments by SIGMA

On 25 May 2015, SIGMA reiterated that, inter alia, the injured party DH was wholly compensated as per their agreement, that there is no mutual agreement between the Republic of Kosovo and the State of the Applicant which would entitle the latter to ask for reimbursement of paid medical costs for its insured DH, the request of the Applicant for compensation is erroneous because it is based on misinterpretation of provisions of the Law on Obligational Relations, and that, there is no violation of human rights because the applicant is a legal person and not a natural one-and cannot-be implied in the term "violation of human rights".

Additional documents of the Applicant

On 13 and 18 February 2015, the Applicant filed with the Court additional documents, where it brought to the attention of the Court two judgments of the Supreme Court (Judgment E. Rev. No. 62/2014 of 21 January 2015 and Judgment E. Rev. no. 48/2014 of 27 October 2014) whereby the Supreme Court ordered Local Insurance Companies to compensate Foreign Insurance Companies.

Applicant's allegations

28. The Applicant claims that the challenged Judgment of the Supreme Court violated Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 24 [Equality Before the Law] of the Constitution in connection with paragraph 1 of Article 6 of the European Convention.

29. The Applicant alleges that the challenged judgment created a situation where to DH was recognized the right to compensation, whereas the Applicant's right to compensation as a third party was not recognized, thereby resulting in violation of its right to property.

30. In relation to the right to property, the Applicant states:

    "*The Supreme Court of the Republic of Kosovo by its judgment failed to justify the ground of the rejection of allegations of the claimant/Applicant (IKK Classic) and at the same time by ignoring the institution of subrogation in insurances, and with this the right to indemnity the Applicant, it has violated the right to property- one of the most fundamental constitutional rights provided by Article 46 of the Constitution of the Republic of Kosovo*".

31. The Applicant alleges that the judgment of the Supreme Court is seriously flawed and is characterized by inadequate legal reasoning, because the Supreme Court failed to explain why the Applicant is not entitled to compensation, which in turn, has resulted in the breach of the right to a fair and impartial trial as guaranteed by Article 31 of the Constitution in connection with paragraph 1 of Article 6 of the Convention.

32. The Applicant argues that "*Article 31 of the Constitution and Article 6 of Convention request from domestic courts to provide reasons for their judgments. The courts are not obliged to give detailed responses to each argument or question. Nevertheless, if the submission is important for the conclusion of the case, then the court, in this case the*

Supreme Court as the last instance of regular judiciary should address it in a specific and in a clear manner in its judgment".

Admissibility of the Referral

33. 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.

34. 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."*

35. 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 (...)".*

36. In the instant case, the Court notes that the challenged Judgment was served on the Applicant on 2 June 2014, whereas the Referral was filed with the Court on 3 September 2014.

37. The Court considers that the Applicant is an authorized party, filed the Referral within the legal deadline and has exhausted available legal remedies. Thus the Referral is admissible. The Court will now delve into and assess the merits of the case.

The merits

38. The Applicant claims that the Supreme Court of Kosovo did not provide a clear answer in relation to the central question about the compensation of the Applicant and, as a result, the Applicant alleges a violation of its right to a fair and impartial trial as guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the Convention. Moreover, the Applicant alleges that the Supreme Court of Kosovo has also violated its rights to property as guaranteed by Article 46 [Protection of Property] of the Constitution.

39. Article 31 [Right to Fair and Impartial Trial] of the Constitution provides:

> *"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
>
> *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*
> *[...]."*

40. Article 6 (Right to fair trial), paragraph 1 of the Convention 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.

41. Furthermore, the right to a fair trial, as embodied in the constitutional text and Article 6 of the Convention, is of fundamental nature to safeguard fundamental rights, in this case the right to property.

42. In fact, Article 46 [Protection of Property] 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.

43. In addition, Article 1 of Protocol 1 [Protection of property] of the Convention states that:

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

44. Finally, the Court also takes into account, Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes:

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

45. The Court recalls that the main complaint of the Applicant revolves around the fact that the Supreme Court of Kosovo took into account only the extra-judicial agreement for compensation struck between the insured DH and "SIGMA", while at the same time, failing to address thoroughly the question of medical expenses paid for by the Applicant to its insured DH.

46. The Court notes that the Supreme Court reasoned its judgment as follows:

"Nevertheless, the Supreme Court of Kosovo, approved as grounded the allegations of the revision regarding the erroneous application of the material law, since the courts of lower instance have erroneously approved as grounded the claimant's (Applicant) statement of claim due to the fact that the insured of the claimant (Applicant) was

indemnified by the respondent for the contested damage, based on the agreement of 03.02.2009 in the amount of €2.729. In this agreement in Article 3 the injured, namely the injured representative stated freely that with payment of the amount mentioned above all claims for this damage current and the future ones, regarding the case that is the subject of this agreement towards the insurance companies SIGMA in Kosovo the driver and the owner of vehicle that was insured in this insurance company and towards all other persons were completely fulfilled and there is no further financial claim towards this insurance company regarding this legal matter for compensation of damage. The respondent pursuant to Article 940 of the LOR was obliged to compensate to the insured of the claimant the damage and it is indisputable that after concluding the agreement mentioned above, the respondent paid for the damage. Likewise, the insured of the claimant pursuant to Article 941 of the LOR according to the guilt of the insured of the respondent was entitled to directly request from the respondent the compensation of damage. For these reasons the Supreme Court of Kosovo finds that the revision of the respondent is grounded since for the traffic accident mentioned above where was injured the insured of the claimant (Applicant) DH the respondent fulfilled the obligation of indemnification the payment of €2.729,00, for which the injured as it was said above has concluded directly with the respondent the indemnity agreement. From this ground, the Supreme Court of Kosovo finds that the claimant cannot claim regress of the debt although it is indisputable that the claimant (Applicant) paid the contested debt to the injured DH as its insured".

47. In this respect, the Court reiterates that it is not its task to consider whether the Supreme Court correctly interpreted the applicable law (legality) but consider whether the Supreme Court infringed individual rights and freedoms protected by the Constitution (constitutionality). (See, for example, Case No. KI72/14, Applicant *Besa Qirezi,* Judgment of 4 February 2015, para.65).

48. Moreover on this point, as a general rule, the establishment of the facts of the case and the interpretation of law are a matter solely for the regular courts whose findings and conclusions in this regard are binding on the Court. However, where a decision of a regular court is clearly arbitrary, the Court can and must call it into question. (See *Sisojeva and Others v. Latvia,* [GC], application no. 60654/00, Judgment of 15 January 2007, para. 89).

49. The Court notes that the Supreme Court found that *"the claimant (Applicant) cannot claim regress of the debt although it is indisputable that the claimant paid the contested debt to the injured DH as its insured"*. However, the Supreme Court did not adequately address and explain the question of compensation of the Applicant, which was its main claim in all proceedings and which failed to address or give clear explanation behind such interpretation of the law. In fact, the Supreme Court recognized that the Applicant paid the medical expenses of the injured DH, but it did not explain why the Applicant cannot claim regress of the paid medical expenses.

50. Moreover, the Court notes that the Supreme Court concluded that "*the revision of the respondent is grounded since for the traffic accident mentioned above where DH was injured, the respondent fulfilled the obligation of indemnification the payment of €2.729,00, for which DH (...) has concluded directly with the respondent the indemnity agreement*". It appears that the agreement fulfills the obligations of SIGMA with regard to DH, but makes scant mention as to the compensation of the Applicant for the paid medical

expenses. Yet somehow the Supreme Court finds that the agreement between SIGMA and DH cancels out the question of compensation of the Applicant as well, but without reasoning.

51. In fact, the Court considers that the Supreme Court failed to explain several relevant issues: (i) whether the extra-judicial agreement struck between SIGMA and the insured DH barred the Applicant from the right to compensation; (ii) how the compensation paid for by SIGMA to the insured DH absolved the former to pay compensation to the Applicant as well; (iii) how the extra-judicial agreement struck between SIGMA and DH can affect the rights of the Applicant-where it is clear - that the latter was not a party to that agreement.

52. The Court considers that the challenged Judgment of the Supreme Court does not address fully and cogently the questions related with the compensation for the medical expenses paid by the Applicant; thus it failed to address the claim of the Applicant and provide reasoning for it. Therefore, the challenged judgment is below the standards required for a reasoned decision.

53. Although the courts are not obliged to address all claims submitted by the Applicants - they must however - address claims that are central to their cases and which are raised in all stages of the proceedings as it happened in the present referral.

54. The Court reiterates that the right to obtain a court decision in conformity with the law includes the obligation for the courts to provide reasons for their rulings with reasonable grounds at both procedural and substantive level.

55. That conclusion is confirmed by the jurisprudence of the ECtHR which established that providing reasons requires explanations with plausible and legally constructed reasons for the decision taken in each individual case, which should include both the legal criteria and factual elements in support of the decision (See case KI72/12, Applicants *Veton Berisha and Ilfete Haziri,* Judgment of 7 December 2012).

56. The ECtHR also found a violation of Article 6 (1) of the Convention (in *Hiro Balani v. Spain)*, where the applicant made a submission requiring a specific and express reply. The court failed to give that reply making it impossible to ascertain whether they had simply neglected to deal with the issue or intended to dismiss it and if so what were the reasons for dismissing it.

57. Consequently, the statement of reasons of the decision must enable the parties and the public in general to follow the justification that led the court to make that decision.

58. Thus, the justification of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on the one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them.

59. Thus, the Court considers that the failure of the Supreme Court to provide clear and complete answers with regard to the questions concerning the entitlement of the Applicant to a compensation as determined by the courts of the lower instance is in breach of the

Applicant's rights to be heard and right to a reasoned decision, as a component of the right to a fair and impartial trial.

60. Therefore, the Court concludes that there is a violation of Article 31 [Right to fair and Impartial Trial] of the Constitution in connection with paragraph 1 of Article 6 [Right to a fair trial] of the Convention.

61. In addition, the Applicant alleges a violation of Article 46 [Protection of Property] of the Constitution.

62. Ultimately, the Court does not deem it necessary to deal further with the allegation of Article 46 of the Constitution whether there was a violation of the right to property in particular as it has found violation of Article 31 of the Constitution in connection with paragraph 1 of Article 6 of the Convention.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 56 (1) and 74 (1) of the Rules of Procedure, by majority, in its session of 10 November 2015:

I. DECLARES, unanimously, the Referral admissible.

II. HOLDS, by majority, that there has been a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 [Right to a Fair Trial] of the European Convention on Human Rights.

III. DECLARES, by majority, invalid the Judgment of the Supreme Court of Kosovo E. Rev. no. 21/2014 of 8 April 2014.

IV. REMANDS, by majority, the Judgment of the Supreme Court for reconsideration in conformity with the judgment of this Court;

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

VI. ORDERS this Judgment be notified to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VII. DECLARES that this Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Arta Rama-Hajrizi

KI111/15, Applicant Musa Shkodra, Constitutional review of Judgment E. Rev. 64/2014, of the Supreme Court, of 18 March 2015

KI115/15, Resolution on Inadmissibility rendered on 22 December 2015 and published on 9 February 2016

Keywords: *individual referral, judicial protection of rights, manifestly ill-founded referral*

The Supreme Court rejected as ungrounded the Applicant's revision against the decisions of the regular courts, which upheld the request of the third party, to exclude the Applicant from the right of co-ownership over a non-governmental organization.

The Applicant alleged among the other violation of Article 54 [Judicial Protection of Rights] of the Constitution.

The Court reiterated that the Applicant when building the case, dealt more with issues of legality which fall within the prerogative of the regular courts, and that his allegations of violation of the constitutional rights guaranteed by Article 54 of the Constitution have remained inexplicable and insufficiently substantiated. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI111/15
Applicant
Musa Shkodra
Request for constitutional review of Judgment E. Rev. 64/2014, of the Supreme Court, of 18 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 Applicant is Mr. Musa Shkodra from Kamenica (hereinafter: the Applicant), who is represented by lawyer Mr. Ymer Huruglica from Gjilan.

Challenged decision

2. The Applicant challenges Judgment E. Rev. no. 64/2014, of the Supreme Court of 18 March 2015, which was served on the Applicant on 27 April 2015.

Subject Matter

3. The subject matter of Referral KI111/15 is the constitutional review of the Judgment of the Supreme Court of Kosovo, which due to erroneous application of the substantive law and erroneous determination of factual situation, has allegedly violated the rights and freedoms guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo (hereinafter: the Constitution).

Legal Basis

4. Article 113.7 of the Constitution, Article 49 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 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 14 September 2015, the President of the Court by Decision no. GJR. KI111/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI111/15, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 2 October 2015, the Court informed the Applicant and the Supreme Court about the registration of Referral.

8. On 22 December 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. The Applicant and Mr. S. H., in capacity of co-owners established the company SOE "Shkodra"(hereinafter: SOESH).

10. On an unspecified date, Mr. S. H. filed a lawsuit with the Basic Court in Prishtina-Department for Commercial Matters (hereinafter: the Basic Court) against the Applicant, by which he requested the exclusion of the Applicant as a co-owner of the company SOESH.

11. On 17 July 2013, the Municipal Court in Prishtina, in accordance with Article 29 of the of the Law on Contested Procedure (hereinafter: LCP) and Article 13 paragraph 1 of the Law on Courts, the court ascertained the jurisdiction to consider this dispute, and, accordingly, rendered Judgment C. no. 482/2012, by which approved the lawsuit of S.H. as grounded.

12. In the enacting clause of the Judgment of the Basic Court is stated: *„In the procedure of evidence, the Court administered all the evidence which is in the case file, by giving the litigants the opportunity to declare themselves about each evidence separately and all the evidence together starting from the expertise, compiled by expert R. B. [...]. At the end, none of the litigants challenged the evidence read".*

13. The Applicant filed an appeal within legal deadline with the Court of Appeal against Judgment C. no. 482/2012 of the Basic Court, alleging, as a legal basis, the violation of the contested procedure provisions and erroneous determination of factual situation.

14. On 3 September 2014, the Court of Appeal rendered Judgment Ae. no. 161/2012, which rejected the Applicant's appeal as ungrounded, and upheld Judgment of the Basic Court, of 17 July 2013, in entirety.

15. In the reasoning of the Judgment, the Court of the Appeal stated: *„Deciding on the appeals of the respondent, the Court of Appeal of Kosovo found that the first instance court, by determining correctly and completely the factual situation, has correctly applied the contested procedure provisions and the substantive law, when it found that the statement of claim of the claimant is grounded. The reasoning of the judgment contains sufficient reasons for the decisive facts, valid for a fair trial of this legal matter, while it does not contain essential violations of the contested procedure, of which this Court, pursuant to Article 194, acts ex officio".*

16. Within legal deadline, the Applicant filed a request for revision with the Supreme Court against the judgments of the lower instance courts, alleging as legal basis, the violation of the of contested procedure provisions and erroneous determination of factual situation.

17. On 18 March 2015, the Supreme Court rendered Judgment E. Rev. 64/2014, which rejected the Applicant's request for revision as ungrounded, with the reasoning: *„According to the assessment of the Supreme Court of Kosovo, the second instance court has correctly applied the contested procedure provisions and the substantive law, when it found that the appeals of the respondent are ungrounded and when it upheld the judgment of the first instance court. In the mentioned judgment, it gave sufficient reasons for the decisive facts, which are accepted also by this Court".*

18. In addition, the Supreme Court specifically answered the Applicant's allegations that awarded compensation for his part in the company's shares was not appropriate. The Supreme Court stated:

> *"With regard to the allegations of the Revision regarding the real contribute of the litigants on the establishment of the enterprise, capital increase, current market price of the enterprise, based on which the division of the enterprise is made, the Supreme Court considers that these facts have to do with the ascertainment of the factual situation, of which, based on Article 214, paragraph 2 of the LCP, the Revision cannot be filed. But, despite this, this Court considers that the issues raised by this allegation have been certified based on the financial expert report, which was not challenged by the parties during the proceeding."*

Applicant's allegations

19. The Applicant stated in the Referral: *„Pursuant to the provision of Article 113, paragraph 7, as read in conjunction with Article 54 of the Constitution of the Republic of Kosovo, I file this Referral for protection of legality, since the challenged judgments were rendered in contradiction with the provision of the Law No.04/L-077 on Obligational Relationships /LOR/ of 10 January 2012....And all relevant evidence were not taken into account when it was decided on this legal matter".*

20. The Applicant addresses the Court with the request:

> *„To declare the Referral admissible and to hold that the challenged judgments have been rendered by erroneous application of the substantive law, namely violation of the Law on Obligational Relationships, proposing to remand the case to the first instance court for reconsideration".*

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, 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.

22. In this respect, Article 113 paragraph 7 of the Constitution provides:

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

23. 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".

24. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) 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".

25. Analyzing the Applicant's allegations regarding the violation of rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: ECHR), the Court notes that the Applicant built his constitutional complaint on the alleged violation of the contested procedure provisions, on erroneous determination of factual situation, and on the stance *"that the regular courts rendered judgments in contradiction with the Law on Obligational Relationships,"* which pertains to the sphere and questions of legality and not of constitutionality.

26. In the present case, when it comes to the constitutional complaints indicating the erroneous determination of factual situation and erroneous application of the substantive law, the Court reiterates that it cannot substitute the assessment of regular courts by its assessment, because it is the duty of the regular courts to assess the presented evidence based on which they determine the facts relevant for the application of the substantive law.

27. Regarding the Applicant's allegations that in the proceedings the regular courts did not assess all the relevant facts and evidence in this legal matter, the Court points out that the domestic courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case, but at the same time are obliged to give reasons for its decisions so as to provide clear and understandable reasons on which those decisions were based (see European Court of Human Rights, *Suominen v. Finland*, Judgment of 1 July 2003).

28. Accordingly, the Court notes that the Supreme Court in its Judgment E. Rev. 64/2014 concluded that the first and second instance court correctly applied the provisions of the contested procedure provisions and the substantive law, and that both judgments contained sufficient decisive facts which the Supreme Court had admitted when deciding on the merits of the Applicant's request for revision.

29. The Court further notes that the Applicant in this constitutional complaint has also mentioned violation of Article 54 [Judicial Protection of Rights] of the Constitution; however, the Court is of the opinion that the Applicant when building the case, dealt more with issues of legality which fall within the prerogative of the regular courts, and that his allegations of violation of the constitutional rights guaranteed by Article 54 of the Constitution have remained inexplicable and insufficiently substantiated.

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

31. In sum, the Court considers that the requirements according to which the Applicant's complaint would be considered in terms of violation of the rights and freedoms guaranteed by the Constitution and the ECHR, have not been met.

32. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible pursuant to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 22 December 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 paragraph 4 of the Law; and

IV. This Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI101/15, Applicant: Rujdi Kasemlari, who requests constitutional review of Decision AC-I-14-0211-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 19 March 2015

KI101/15, Resolution on Inadmissibility of 22 December 2015 published on 10 February 2016

Key words: individual referral, constitutional review of decision of the Appellate Panel of the Special Chamber, ungrounded, manifestly ill-founded.

The Applicant submitted the Referral pursuant to Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

On 18 October 2012, the Applicant filed a claim with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) against persons J. N., B. N., as well as the socially-owned enterprise "PIK Progres-Export" (hereinafter: PIK), by which he requested the confirmation of his ownership rights over two parcels of land.

On 19 March 2015, the Appellate Panel rendered Decision [AC-I-14-0211- A0001], by which it rejected the Applicant's appeal as ungrounded with the reasoning that, "*After having considered the appealed allegations of the claimant and the case file documents, the Appellate Panel found that the appeal is ungrounded, and therefore, it upheld Decision [C-III-12-1711] of the Specialized Panel. The Specialized Panel has correctly based its decision on Article 172 and Article 52.2 of Annex of the Law on the Special Chamber*."

In the present case, the Court notes that the Specialized Panel based its Decision and Judgment [C-III-12-1711] on the legal provisions of Article 17.2 and Article 52.2 of the Annex of the Law on Special Chamber.

The Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant in the Referral has not substantiated that the challenged decision violates his rights guaranteed by the Constitution or the ECHR. Accordingly, the Referral is manifestly ill-founded and is to be declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI101/15
Applicant
Rujdi Kasemlari
Request for Constitutional Review of Decision AC-I-14-0211-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 19 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. Rujdi Kasemlari from Prizren (hereinafter: the Applicant), who is represented by a lawyer, Mr. Refki Taç.

Challenged Decision

2. The Applicant requests the constitutional review of Decision AC-I-14-0211-A0001, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 19 March 2015, which was served on the Applicant on 31 March 2015.

Subject Matter

3. Subject matter of Referral KI101/15 is the constitutional review of the Decision which, allegedly, violated the Applicant's constitutional rights and freedoms as 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).

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 21 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 9 August 2015, the President of the Court, by Decision no. GJR. KI101/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI101/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 4 September 2015, the Court informed the Applicant and the Appellate Panel about the registration of the Referral.

8. On 22 December 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 18 October 2012, the Applicant filed a claim with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) against persons J. N., B. N., as well as the socially-owned enterprise "PIK Progres-Export" (hereinafter: PIK), by which he requested the confirmation of his ownership rights over two parcels of land.

10. On 25 October 2013, the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) requested the Applicant to submit within 15 days the specified claim in which he should state the accurate addresses of the respondents J.N. and B.N.

11. On 15 November 2013, the Applicant responded to the request of the Specialized Panel stating that, *"the respondents moved to Turkey 60 years ago, and in the meantime, they have perhaps changed their surnames, which means that their addresses were unknown to him."*

12. On 23 May 2014, the Specialized Panel rendered partial Decision [C-III-12-1711] by which it rejected the Applicant's claim against the respondents J.N. and B.N. as inadmissible, with the reasoning that, *"the claimants did not provide any address (even the old address which they could have known) for the first and second respondent, or any other evidence if the above-mentioned address is unknown to the authorities, which is the obligation of the claimant pursuant to Article 17.2 of the Annex of the Law on Special Chamber."*

13. As regards the Applicant's claim against PIK, the Specialized Panel on the same date (23 May 2014) rendered Judgment [C-III-12-1711] by which it rejected the Applicant's claim as ungrounded due to absence of the Applicant, in accordance with Article 52.2 of the Annex of the Law on the Special Chamber. In the reasoning of the Judgment the Specialized Panel stated: *"The claimant did not appear on 28 January 2014, at the hearing session. The claimant also did not appoint the representative to represent him because of his absence. Mr. R.T. appeared at the court in the hearing session by stating that he was the representative of the claimant, but did not submit a valid power of attorney, and as such cannot be considered a legitimate representative of the claimant."*

14. On 7 July 2014, the Applicant filed an appeal against the partial decision on the inadmissibility of the claim, as well as against the Judgment of the Specialized Panel, of 23 May 2014.

15. On 19 March 2015, the Appellate Panel rendered Decision [AC-I-14-0211-A0001] by which it rejected the Applicant's appeal as ungrounded with the reasoning that, *"After having considered the appealed allegations of the claimant and the case file documents, the Appellate Panel found that the appeal is ungrounded, and therefore, it upheld Decision [C-III-12-1711] of the Specialized Panel. The Specialized Panel has correctly based its decision on Article 17.2 and Article 52.2 of Annex of the Law on the Special Chamber."*

Applicant's Allegations

16. The Applicant alleges that: *"the Special Chamber of the Supreme Court, by avoiding the obligations under Article 19.2 of Annex of the Law on the Special Chamber to order the claimant that within 15 days submits the addresses of the respondents, who moved to Turkey 60 years ago, violated the right to a trial, which is related to the right to property, the rights guaranteed by the Constitution of Kosovo and international documents applicable in Kosovo."*

17. The Applicant addresses the Court *"with a request that the Constitutional Court renders DECISION and declares the Decision AC-I-14-0211-A0001, of the Special Chamber of the Supreme Court of Kosovo of 19 March 2015, unconstitutional, assuming that in the procedure of retrial will be eliminated the violations of rights ..."*

Admissibility of the Referral

18. In order to be able to adjudicate the Applicant's complaint, the Court should 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.

19. 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."*

20. Article 48 of the Law also provides:

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

21. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) 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".

22. The Court notes that the Applicant built his constitutional complaint on the allegation of violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution.

23. With respect to the complaint that the Applicant has not benefitted from a fair trial under Article 31 of the Constitution and Article 6 of the ECHR, the Court notes that the right to a fair trial is a complex right encompassing a series of rights that should be provided, equally, by all competent authorities and all parties to the proceedings.

24. The Court also recalls that the principle of a fair and impartial trial requires that courts refer to a specific legal norm, whereas the legal basis of the judgment should not be arbitrary, i.e. out of the present case.

25. In the present case, the Court notes that the Specialized Panel based its Decision and Judgment [C-III-12-1711] on the legal provisions of Article 17.2 and Article 52.2 of the Annex of the Law on Special Chamber which states:

17.2 "A Claimant shall also provide in its claim or complaint the name of each person specifically identified as a Respondent. The Claimant shall also undertake reasonably diligent efforts to ascertain and provide the last known address of each such person and include such information in its claim or complaint".

52.2 „If a duly summoned Claimant fails to appear at a hearing or otherwise abandons the proceedings, the concerned judge(s) may, upon application of the Respondent, render a default Judgment against the Claimant dismissing the claim and ordering the Claimant to pay all costs of the proceedings."

26. As such, the Court notes that the regular courts found that the Applicant had failed to comply with procedural requirements laid down in legislation. The Court further notes that the Appellate Panel in Decision [AC-I-14-0211-A0001] also confirmed the accuracy of the legal provisions on which the Specialized Panel based its decision.

27. Based on the above, the Court notes that the Applicant's allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR are ungrounded.

28. Assessing the reasons of the constitutional complaint from the aspect of the provisions of Article 46 of the Constitution and the right to property under Article 1 of Protocol no. 1 of the ECHR, the Court is of the opinion that the mere fact that the Applicant in the legal matter of confirmation of his property rights did not succeed to convince the regular courts, does not by itself represent a valid ground to establish a violation of his rights guaranteed by Article 46 of the Constitution, unless he substantiates that the court has arbitrarily and unjustly deprived him of the property (see Case: *mutatis mutandis Mezotur-Tiszazugi Tarsulat against Hungary*, no. 5503/02, the ECHR judgment of 26 July 2005).

29. Therefore, the Court considers that the Applicant has not substantiated his claims, nor he has submitted any *prima facie* evidence indicating a violation of the 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).

30. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant in the Referral has not substantiated that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.

31. Accordingly, 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, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 22 December 2015, with majority of votes

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 paragraph 4 of the Law; and

IV. This Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI98/15, Applicant: Shpendim Bokshi, Constitutional review of Decision Ac. No. 4223/2014 of the Court of Appeals of Kosovo, of 25 March 2015

KI98/15, Resolution on Inadmissibility of 22 December 2015, published on 10 February 2016

Key words: *individual referral, right to legal remedies, right to fair and impartial trial, non-exhaustion of legal remedies*

The Independent Commission for Mines and Minerals (hereinafter: ICMM) imposed two administrative fines on the Applicant in the amount of € 10.000 for having performed the activity of separation of mining resources without possessing the required license to perform such an activity.

The Applicant filed an appeal with the regular courts. The Court of Appeals rejected the Applicant's appeal and upheld the decision of the Basic Court in Gjakova.

The Applicant alleged that Decision Ac. No. 4223/2014 of the Court of Appeals of Kosovo violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedy] and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to fair trial] and Article 13 [Right to effective remedy] of the European Convention on Human Rights (hereinafter: ECHR).

The Court found that the Applicant had not exhausted the effective legal remedies by which he could challenge the legality of ICMM Decisions (AC. No. 189/12 of 14 May 2012) and (Ac. No. 219/2012 of 3 July 2012) in the administrative proceedings before the Supreme Court as per the instruction on legal remedy.

The Referral was declared inadmissible because the Applicant had not exhausted all legal remedies provided by law in order to be able to submit a Referral to the Constitutional Court.

RESOLUTION ON INADMISSIBILITY

in
Case no. KI98/15
Applicant
Shpendim Bokshi
Constitutional review of Decision Ac. no. 4223/2014, of the Court of Appeal of Kosovo, of 25 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. Shpendim Bokshi, the owner of the legal entity "Bokshi" L.L.C. from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision (Ac. no. 4223/14), of the Court of Appeal of Kosovo, of 25 March 2015.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Court of Appeal, which has allegedly violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies] and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] and Article 13 [Right to an effective remedy] of the European Convention on Human Rights (hereinafter: ECHR).

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 15 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 19 August 2015, the President of the Court, by Decision No. GJR. KI98/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI 98/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.

7. On 7 September 2015, the Court informed the Applicant about the registration of the Referral and requested the Applicant to fill in the referral form. At the same time, the Court requested the Applicant to submit to the Court the challenged decisions and attach the relevant documents indicating that he is the owner of the legal entity L.L.C. "Bokshi.

8. On 14 September 2015, the Applicant submitted to the Court only the decisions challenged by him.

9. On 17 September 2015, the Court requested again the Applicant to fill in the referral form and to submit the relevant documents, indicating that he is the owner of the legal entity L.L.C. "Bokshi".

10. On 6 October 2015, the Applicant submitted to the Court the completed referral form and the certificate of registration of the legal entity L.L.C. "Bokshi".

11. On 26 October 2015, the Court requested that the Applicant declares whether he has simultaneously filed a request for protection of legality with the State Prosecutor of Kosovo.

12. On 16 November 2015 the Applicant submitted to the Court the request for protection of legality, which he filed with the State Prosecutor on 6 May 2015.

13. On 22 December 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 in administrative procedure

14. On 14 May 2012, the Independent Commission for Mines and Minerals (hereinafter: ICMM) by Decision (KA. no. 189/12) imposed an administrative fine on the Applicant in the amount of € 5,000, for performing separation activities of mining resources without possession of the required license to perform such an activity.

15. On 3 July 2012, the ICMM by Decision (KA. no. 219/2012) imposed another (new) administrative fine on the Applicant in the amount of € 5,000, because the Applicant allegedly continued to perform activities of separation of mining resources without a license.

16. Both of the above referenced decisions rendered by ICMM, contain the following legal remedy:

"Against this decision is allowed the initiation of administrative proceedings in accordance with the Law on Administrative Procedure. The claim for initiation of administrative proceedings shall be submitted before the Supreme Court within 30 days from the submission of the decision of the ICMM".

Summary of facts in executive procedure

17. On 2 May 2013, the ICMM submitted a proposal to the Municipal Court in Gjakova for execution of Decision (KA. no. 189/12 of 14 May 2012) and of Decision (KA. no. 219/2012 of 3 July 2012), which imposed an administrative fine on the Applicant in the total amount of € 10,000.

18. On 14 May 2013, the Basic Court in Gjakova, by Decision (E. No. 378/13), allowed the execution of Decision (AC. No. 189/12, of 14 May 2012) and of Decision (AC. No. 219/2012, of 3 July 2012).

19. On 27 May 2013, the Applicant filed an objection against Decision (E. No. 378/13), of the Basic Court in Gjakova on granting execution, arguing that this enforcement case lacked the required execution title, and proposed that the execution be declared inadmissible.

20. On 24 May 2014, the Basic Court in Gjakova, by Decision (E. No. 378/13), rejected the Applicant's objection as ungrounded.

21. On an unspecified date, the Applicant filed the appeal with the Court of Appeal against Decision (E. No. 378/13, of 24 May 2014) due to violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, and proposed that his appeal be approved as grounded.

22. On 25 March 2015, the Court of Appeal by Decision (AC. No. 4223/2014), rejected the Applicant's appeal and upheld Decision (E. No. 378/13, of 24 May 2014), of the Basic Court in Gjakova.

23. In its decision, the Court of Appeal held that *"[...] The challenged decision is fair and the first instance court acted correctly when rejected the Applicant's objection as ungrounded. This is because the Applicant was caught while conducting illegally special activity -separation, therefore, the ICMM imposed fines under Decision (AC. No. 189/12 of 14 May 2012) and Decision (AC. No. 219/2012, of 3 July 2012) [...]".*

24. In addition, the Court of Appeal held that, although *"[...] The ICMM decisions can be challenged in the administrative procedure by initiating the administrative conflict, this does not present legal obstacle for the execution, because pursuant to the Law on Administrative Conflicts, the filing of lawsuit against administrative decisions does not stay their execution [...]".*

25. On 6 May 2015, the Applicant submitted the request for protection of legality to the State Prosecutor of Kosovo.

Applicant's Allegations

26. The Applicant alleges that Decision (E. No. 378/2013) of the Basic Court in Gjakova and Decision (Ac. No. 4223/14), of the Court of Appeal have violated the guaranteed rights as referred to in paragraph 3 of this document.

27. The Applicant also alleges that the challenged decisions are entirely ungrounded and unlawful for the procedural and substantive reasons.

28. Furthermore, the Applicant alleges that *"[...] The Basic Court in Gjakova, namely the judiciary, has neither the subject matter jurisdiction, nor territorial jurisdiction for execution of the administrative fine imposed by the Independent Commission for Mines and Minerals, Prishtina. The court does not execute fines, fees and taxes, namely the public fiscal obligations in civil execution procedure. Tax liabilities, fees and public obligations are executed same as the taxes, by the authority which has imposed it, if they are lawful".*

29. The Applicant requests *"the State Prosecutor of Kosovo files a request for protection of legality with the Supreme Court of Kosovo, so that this ordinary injustice done to me is eliminated [...] and the Constitutional Court to annul and declare unconstitutional the decisions of the regular courts".*

Admissibility of the Referral

30. The Court first examines whether the Applicant meets the admissibility requirements laid down in the Constitution and 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 provides:

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

32. In addition, Article 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".*

33. 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..."*

34. The Court notes that the Applicant bases his allegation on erroneous application of the law by the regular courts, emphasizing in particular that *"the judiciary has neither the subject nor territorial jurisdiction for the enforcement of the administrative fine imposed by the Independent Commission..."*

35. In addition, the Applicant has not exhausted the effective legal remedies, by which he had the opportunity to challenge the legality of the Decision of the ICMM (KA. no. 189/12 of 14 May 2012) and of the Decision of the ICMM (KA. No. 219/2012 of 3 July 2012), in the administrative proceedings before the Supreme Court, in accordance with the legal remedy.

36. The Court also refers to Law no. 03/L-202 on Administrative Conflicts, which in Article 23 paragraph 1 and 2 provides as follows:

> *"1. For the indictments against administrative acts of all bodies shall decide the competent court for administrative matters in first instance, unless otherwise provided by other legal provisions.*
> *2. Against the issued decision on administrative conflict, complain shall be submitted to the competent court for administrative matters of second instance".*

37. The Court notes that the issues raised by the Applicant before the Constitutional Court could have been initiated before the Supreme Court, in accordance with Law No. 03/L-202 on Administrative Conflicts.

38. The Court further notes that the Applicant simultaneously with the request for the constitutional review, filed also the request for protection of legality with the State Prosecutor on 6 May 2015, and that the proceedings upon the request for protection of legality has not been completed.

39. In these circumstances, on the basis of the documents submitted by the Applicant to the Court, it follows that the Applicant has not exhausted all effective remedies which he had at his disposal.

40. Therefore, the Referral is premature because the Applicant's case, pertaining to the proposal for rejection of execution of the ICMM decision due to lack of jurisdiction of the regular courts, is still pending the notification by the State Prosecutor before the Supreme Court of Kosovo.

41. In this regard, the Court reiterates that the regular courts are independent in exercising legal powers and it is their constitutional obligation and prerogative to interpret the issues of fact and law which are relevant to the cases filed before them.

42. 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 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 Kl41/09, Applicant *AAB-RIINVEST University L.L.C., Prishtina*, Resolution on Inadmissibility of 21 January 2010, and *mutatis mutandis*, ECHR, *Selmouni vs. France*, No. 25803/94, ECHR, Decision of 28 July 1999).

43. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, administrative or court proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (See case KI07/09, the Applicants. *Demë Kurbogaj and Besnik Kurbogaj*, Resolution on Inadmissibility of 19 May 2010).

44. Accordingly, the Constitutional Court should not assess the alleged constitutional violations, without previously providing the opportunity to regular courts to finalize the proceedings filed before them, in order to correct and eliminate violations of the Constitution.

45. Therefore, the Court finds that the Applicant has not exhausted all legal remedies provided by law to be able to submit the Referral to the Constitutional Court, and the Referral should be rejected as inadmissible, in accordance with 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 paragraph 7 of the Constitution, Articles 20 and 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 22 December 2015, with majority of votes

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

KI91/15, Applicant Kadri Sherifi, Request for Constitutional Review of Judgment AP. no. 320/2011, of the Supreme Court of the Republic of Kosovo, of 18 January 2012.

KI91/15, Resolution on inadmissibility of 18 December 2015, published on 10 February 2016.

Key words: individual referral, criminal procedure, constitutional violation, violation of law, out of time referral, inadmissible referral.

The Applicant among others alleges that the challenged decisions, namely Judgment AP. No. 320/2011 of the Supreme Court and Judgment P. no. 491/2009 of the District Court, violated the rights guaranteed by the Law and the Constitution, because he was unjustly imprisoned, serving the sentence of 6 (six) years.

In sum, the Court found that the Applicant's Referral regarding the constitutional review of Judgment AP. no. 320/2011 of the Supreme Court, does not meet the procedural admissibility requirements in accordance with Article 49 of the Law, because it was filed out of time.

RESOLUTION ON INADMISSIBILITY

in
Case no. KI91/15
Applicant
Kadri Sherifi
Request for constitutional review of Judgment AP. no. 320/2011, of the Supreme Court of the Republic of Kosovo, of 18 January 2012
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. Kadri Sherifi, residing in Prishtina.

Challenged decision

2. The Applicant challenges Judgment AP. no. 320/2011, of the Supreme Court of the Republic of Kosovo, of 18 January 2012 (hereinafter: the Supreme Court), and Judgment P. 491/2009, of the District Court, of 28 March 2011 (hereinafter: the District Court).

3. Judgment AP. no. 320/2011 of the Supreme Court was served on the Applicant on 27 February 2012.

Subject Matter

4. The subject matter of this Referral is the constitutional review of Judgment AP. no. 320/2011, of the Supreme Court, of 18 January 2012 and Judgment P. no. 491/2009, of the District Court, of 28 March 2011, regarding the alleged violations of the Applicant's rights guaranteed by the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

5. In fact, the Applicant in the Referral did not specify any constitutional provision for violation of his rights, however, the Court understands that this is about the right to fair and impartial trial, guaranteed by Article 31 of the Constitution.

Legal Basis

6. The Referral is based on Article 113.7 of the Constitution and Articles 22 and 47 of the Law.

Proceedings before the Constitutional Court

7. On 2 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 19 August 2015, the President of the Court by Decision No. GJR. KI91/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI91/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova (member) and Arta Rama-Hajrizi (member).

9. On 7 September 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of this Referral to the Supreme Court.

10. On 1 October 2015, the Court requested additional information from the Court of Appeal in Prishtina, regarding the fact whether the Applicant filed appeal against Decision KP. no. 216/2014, of the Basic Court in Prishtina, of 12 May 2015.

11. On 7 October 2015, the Court requested information from the Basic Court in Prishtina, regarding the date of receipt of the final decision (Judgment, Ap. no.320/2011) by the Applicant.
12. On 22 October 2015, the Basic Court in Prishtina informed the Court that the Applicant was served with Judgment Ap. no.320/2011, of the Supreme Court on 27 February 2012.

13. On 19 November 2015, the Court requested the Basic Court the additional information regarding the fact whether the Applicant filed an appeal against Decision KP. no. 216/2014, of the Basic Court in Prishtina, on 12 May 2015.

14. On 2 December 2015, the Basic Court informed the Court that the Applicant did not file the appeal against Decision KP. no. 216/2014, of the Basic Court in Prishtina.

15. On 18 December 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 the facts

16. On 25 November 2010, the District Public Prosecutor's Office in Prishtina (hereinafter: the DPPO) at the request of the injured persons (claimants) filed the indictment DPP 804-3/2009, against the Applicant, his brother and several other accused, requesting that they are found guilty of the criminal offence of smuggling of migrants, pursuant to Article 138, paragraph 2, in conjunction with paragraph 1, and in conjunction with Article 23 of the Criminal Code (hereinafter: the CCK).

17. On 28 March 2011, the District Court in Prishtina (Judgment, P. no. 491/2009), found the Applicant guilty of committing the criminal offense under Article 138 paragraph 1, in conjunction with Article 23 of the CCK. The District Court in Prishtina based the decision on finding the Applicant guilty on the DPP evidence and on the statements of the injured

parties. The court in question, taking into account the mitigating and aggravating circumstances of the case, concluded that the Applicant is guilty of committing the criminal offense and sentenced him to imprisonment for a period of 6 (six) years, by counting the time spent in detention on remand.

18. Against the Judgment of the District Court in Prishtina, the Applicant filed the appeal with the Supreme Court. Based on the case file, the appeal was filed also by the DPPO in Prishtina, because of the lenient sentence imposed by the District Court of Prishtina, requesting more severe punishment.

19. On 18 January 2012, the Supreme Court (Judgment, AP. No. 17/2015) rejected as ungrounded the appeals of the Applicant and of the DPPO, by upholding in entirety Judgment P. no. 491/2009, of the District Court, of 28 March 2011.

20. On 14 March 2014, the Applicant filed a request for reopening of the criminal proceedings with the Basic Court in Prishtina, against Judgment P. no. 491/2009 of the District Court of 28 March 2011, which became final, after the Supreme Court upheld it on 18 January 2012 (Judgment, Ap. no. 17/2015).

21. On 12 May 2014, the Basic Court in Prishtina (Decision, KP. no. 216/2014) rejected the Applicant's request for reopening of the criminal proceedings. The abovementioned court based the reason of the rejection on the fact that "*the evidence and the facts on which the Applicant was referred to do not provide reasons for allowing the reopening of criminal proceedings"*. By this Decision, the Applicant was given the right to submit an appeal to the Court of Appeal, within three (3) days of receipt of the Decision.

Applicant's allegations

22. The Applicant alleges that the challenged decisions, namely Judgment AP. No. 320/2011 of the Supreme Court and Judgment P. no. 491/2009 of the District Court, violated the rights guaranteed by the Law and the Constitution, because he was unjustly imprisoned, serving the sentence of 6 (six) years.

23. The Applicant alleges that the regular courts erroneously and unjustly charged him with the criminal offense, due to the fact, that he did not participate in the actions, allegedly taken by another person who is on the run, and not by him.

Admissibility of the Referral

24. Before considering a Referral, the Constitutional Court needs to examine whether it meets the procedural admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. Regarding this, the Court refers to Article 49 of the Law, which stipulates:

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

26. In addition, Rule 36 (1) (c) of the Rules of Procedure of the Court provides:

"(1) The Court may consider a referral if:

[...]

c) the referral is filed within four months from the date on which the decision of the last effective remedy was served on the Applicant".

[...]

27. The Court notes that Judgment AP. no. 320/2011, of the Supreme Court was rendered on 18 January 2012, and was served on the Applicant on 27 February 2012. However, the Applicant submitted the Referral to the Court on 2 July 2015, which indicates that the Referral was filed after three (3) years and four months, since the Judgment of the Supreme Court was served on the Applicant.

28. As it can be noted, the Applicant's Referral, regarding the challenging of the constitutionality of Judgment AP. no. 320/2011, of 18 January 2012, was submitted to the Court after the deadline provided by the aforementioned provisions of the Law and the Rules of Procedure .

29. The Court also notes that the Applicant attached to his Referral the Decision KP. No. 216/2014, of the Basic Court in Prishtina, by which he requested the reopening of the criminal proceedings (as an extraordinary legal remedy). The Court *ex-officio* requested the additional information from the Basic Court in Prishtina, in order to understand whether the Applicant had filed the appeal with the Court of Appeal against the decision of the first instance court. From the information provided, the Court realized that the Applicant had not used the right to submit an appeal to the Court of Appeal. This means that the Applicant has not exhausted legal remedies, under the applicable law, regardless the legal remedy provided by the abovementioned decision, regarding the right for filing the appeal with the Court of Appeal, within deadline of 3 (three) days of service of the Decision of the Basic Court.

30. However, the Court considers that Decision KP. no. 216/2014, of the Basic Court, cannot be subject of review of this Referral, because the Applicant does not challenge its constitutionality, but of Judgment AP. no. 320/2011 of the Supreme Court and Judgment P. no. 491/2009 of the District Court in Prishtina, which are mentioned in paragraph 2 of this document.

31. In sum, the Court considers that the Applicant's Referral regarding the constitutional review of Judgment AP. no. 320/2011 of the Supreme Court (final remedy), does not meet the procedural admissibility requirements in accordance with Article 49 of the Law, therefore, it is to be declared as out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and in accordance with Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, on 18 December 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 effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Bekim Sejdiu	Arta Rama-Hajrizi

KI43/15, Applicant: ECO-HIGJIENA L.L.C. from Gjilan, who requests constitutional review of Judgment C. no. 381/2014 of the Basic Court in Gjilan, of 3 December 2014.

KI43/15, Resolution on Inadmissibility, of 18 December 2015, published on 10 February 2016.

Key words: individual referral, constitutional review of Judgment of the Basic Court in Gjilan, interim measure, premature.

The Applicant submitted the Referral pursuant to Article 113.7 and 21.4 of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on the Constitutional Court and Rules 54 and 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

The Applicant claims that the alleged failure to be served with the Judgment of the Basic Court in Gjilan violated his right guaranteed by the Article 32 [Right to Legal Remedies] of the Constitution of Kosovo. At the same time, the Applicant requests the Court to impose Interim Measure or to order the Basic Court in Gjilan to annul all proceedings by which the decision of the Basic Court in Gjilan became final.

The Court notes that on 20 May 2015, the Applicant submitted a claim with the Court of Appeal where the procedure is still pending. The Court further recalls that the principle of subsidiarity requires that the Applicant exhausts all legal remedies provided by law. Accordingly, the Court considers that the Applicant's Referral is premature, because of the non exhaustion of all available legal remedies, in accordance with Article 113.7of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedures. For the same reason, the Court also rejected the request for Interim Measure.

RESOLUTION ON INADMISSIBILITY

in

Case no. KI43/15

Applicant

ECO-HIGJIENA L.L.C

Constitutional Review of Judgment C. no. 381/2014, of the Basic Court in Gjilan, of 3 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 the Company ECO-HIGJIENA L.L.C. from Gjilan (hereinafter: the Applicant), which is represented by Besim Osmani, lawyer from Kamenica.

Challenged decision

2. The Applicant challenges Judgment C. no. 381/2014 of the Basic Court in Gjilan, of 3 December 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment C. no. 381/2014 of the Basic Court in Gjilan, of 3 December 2014.

4. The Applicant claims that its alleged failure to be served with the challenged judgment is contrary to Article 32 [Right to Legal Remedies], as well as to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, under Article 22 of the Constitution of Kosovo are directly applicable in the Republic of Kosovo.

5. At the same time, the Applicant requests the Court to impose Interim Measure and to order the Basic Court in Gjilan to annul the proceedings in case C. no. 381/2014 until the final decision is rendered.

Legal basis

6. The Referral is based on Article 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 and 55 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 8 April 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 14 April 2015, the President of the Court, by Decision no. GJR. KI43/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI43/15 appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

9. On 1 June 2015, the Court informed the Applicant about the registration of the Referral and requested him to submit to the Court the power of attorney, showing that he is the legal representative of the Company ECO-HIGJIENA L.L.C. from Gjilan. On 12 June 2015, the Applicant submitted to the Court the required power of attorney.

10. On 15 June 2015, the Court sent a copy of the Referral to the Basic Court in Gjilan. On 26 June 2015, the Court received a response from the Basic Court in Gjilan. In the response of the Basic Court is stated that Judgment C. no. 381/2014 upon the appeal of the Applicant (the appeal was submitted on 12 June 2015) is pending before the Court of Appeal of Kosovo.

11. On 1 July 2015, by Decision GJR. KI43/15, the President of the Court appointed Judge Ivan Čukalović as a member of the Review Panel replacing Judge Kadri Kryeziu, whose mandate in the Constitutional Court ended on 26 June 2015.

12. On 16 October 2015, the Applicant informed the Court that he submitted appeal against Judgment C. no. 381/2014 of Basic Court in Gjilan to the court of appeal, and this case is still pending.

13. On 18 December 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.

14. At the same time, the Review Panel proposed to the full Court to reject the Applicant's request for interim measure, with a justification that it did not submit any convincing evidence to justify the imposition of the interim measure, as necessary, in order to avoid an unrecoverable damage, or evidence that such a measure is in the public interest.

Summary of facts

The administrative procedure within the Company

15. From the case file it follows that the Board of Directors of the Company ECO-HIGJIENA L.L.C. from Gjilan in 2012 suspended from work two of its workers.

16. In further proceedings an agreement was reached between the two workers and ECO-HIGJIENA, so that ECO-HIGJIENA annulled the decision on suspension of these workers, whereas the same workers resigned from their positions.

The proceedings before the regular courts in the civil dispute

17. The above mentioned workers filed a claim with the Municipal Court in Gjilan regarding the contested resignation, which they alleged that they filed under pressure, applied to them by the Board of Directors of ECO-HIGJIENA.

18. On 2 May 2013, the Basic Court in Gjilan, by Judgment C. no. 809/12, approved the statement of claim of the above mentioned workers and obliged the company, ECO-HIGJIENA, to re-instate the workers to their job positions and to compensate their personal income from the day of their disputed resignation.

19. The Applicant filed an appeal with the Court of Appeal of Kosovo against the decision of the Municipal Court.

20. On 8 January 2014, the Court of Appeal of Kosovo by Judgment AC. no. 1857/13 rejected the Applicant's appeal against Judgment C. no. 809/12, of the Municipal Court, and partly modified it.

21. The above mentioned workers submitted a request for revision to the Supreme Court of Kosovo against the decision of the Court of Appeal of Kosovo.

22. On 12 May 2014, the Supreme Court of Kosovo, by Decision Rev. no. 87/2014, approved the part of the revision related to re-instatement of the abovementioned workers to their job positions, whereas it quashed and remanded the decision of the first and second instance court to the first instance court for retrial.

23. On 3 December 2014, the Basic Court in Gjilan in the repeated procedure rendered Judgment C. no. 381/14.

24. On 19 January 2015, the Applicant filed a request for revision with the Supreme Court of Kosovo against the decision of the Municipal Court.

25. On 30 April 2015, the Basic Court in Gjilan rejected the request for revision of the Applicant as inadmissible.

26. On 20 May 2015, the Applicant filed appeal with the Court of Appeal against the decision of the Basic Court on the rejection of the request for revision. This procedure is still ongoing.

Applicant's allegations

27. The Applicant claims that the alleged failure to be served with Judgment C. no. 381/14 of the Basic Court in Gjilan, of 3 December 2014, violated his right guaranteed by the Article 32 [Right to Legal Remedies] of the Constitution of Kosovo.

28. The Applicant requests that the Court:

    I. „To declare our Referral admissible:

II. *To hold that the Court in case C. No. 381/14, where declared its decision on merits final, has violated the provisions of the Constitution of the Republic of Kosovo, Articles 32 and 22.1.2:*
III. *To order the Basic Court in Gjilan to annul all proceedings, by which Decision C. No. 381/14 became final,*
IV. *To order the Basic Court in Gjilan, to serve the decision C. No. 381/14, on me, as authorized person, so that I can exercise my right to appeal this decision".*

29. The Applicant also requests the Court to:

> *„impose a certain measure or to order the Basic Court in Gjilan to terminate all proceedings related to the execution of decision number C. No. 381/2014, until a decision based on merits is rendered in relation to this Referral".*

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 the Rules of Procedure.

31. In this respect, the Court refers to Article 113.7 of the Constitution, which stipulates:

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

32. 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".*

33. Moreover, the Court takes into account Rule 36 (1) (b) of the Rules of Procedures, which provides 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 ".*

34. In that regard, the Court recalls that the Applicant stated that the Basic Court in Gjilan, by not serving Judgment C. no. 381/14 violated his right to a legal remedy guaranteed by Article 32 of the Constitution of Kosovo.

35. The Court notes that on 20 May 2015, the Applicant submitted a claim with the Court of Appeal where the procedure is still pending.

36. The Court further recalls that the principle of subsidiarity requires that the Applicant exhausts all legal remedies provided by law.

37. 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's legal system shall provide effective remedies against violations 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. Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see: *mutatis mutandis*, ECHR, *Selmouni v France*, no. 25803/94, decision of 28 July 1999).

38. Accordingly, the Court considers that the Applicant's Referral is premature, because of the 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 Procedures.

39. It follows that the Referral is inadmissible.

Assessment of the request for Interim Measure

40. The Court notes that the Applicant in the Referral requests the Court to impose Interim Measure or to order the Basic Court in Gjilan to suspend all proceedings related to the

enforcement of decision under number C. no. 381/2014, until it is decided on the merits of this Referral.

41. In order to impose an Interim Measure, in accordance with Rule 55 (4) of the Rules of Procedure, the Court must determine:

"(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.

(c) the interim measures are in the public interest".

42. As previously concluded, the Referral is inadmissible; therefore, the request for Interim measure is to be rejected.

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 18 December 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**

CourtRobert Carolan Arta Rama-Hajrizi

K1l00/15, Applicants: Nurten Luboteni, Gazmend Luboteni, Suna Buqinca, Lulieta Hoxha, Mytaher Luboteni, Valbon Luboteni, Veton Luboteni, Diellza Luboteni, Rona Luboteni, Edi Luboteni and Bashkim Spahiu, who request Constitutional Review of Judgment AC-I-14-0314, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 23 December 2014

KI100/15, Resolution on inadmissibility, of 22 December 2015, published on 11 February 2016.

Key words: individual referral, Constitutional Review of Judgment of the Appellate Panel of the Special Chamber, out of time.

The Applicants filed the Referral pursuant to Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

The legal predecessors of the Applicants initiated judicial proceedings before the Municipal Court in Prizren to annul a sale-purchase contract on property. The judicial proceedings went through different instances until the Appellate Panel of the Special Chamber. The Appellate Panel (Judgment AC-I-14-0314), rejected as ungrounded the Applicants' appeal.

The Applicants allege, among other, that the Appellate Panel of the Special Chamber violated their rights guaranteed by the Constitution, based on Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution of Republic of Kosovo and the rights guaranteed under Article 1 of Protocol 1 of the European Convention on Human Rights.

The Court notes that the challenged Judgment was served on the Applicants on 21 January 2015. The Applicants submitted the Referral to the Court on 23 July 2015. Thus, more than 4 (four) months passed from the date of service of the Judgment on the Applicants. The Referral is inadmissible because it was filed out of time.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI100/15
Applicants
Nurten Luboteni, Gazmend Luboteni, Suna Buçinca, Lulieta Hoxha, Mytaher Luboteni, Valbon Luboteni, Veton Luboteni, Diellza Luboteni, Rona Luboteni, Edi Luboteni and Bashkim Spahiu
Request for constitutional review of
Judgment AC-I-14-0314, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, 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.

Applicants

1. The Referral is submitted by Nurten Luboteni, Gazmend Luboteni, Suna Buçinca, Lulieta Hoxha, Mytaher Luboteni, Valbon Luboteni, Veton Luboteni, Diellza Luboteni, Rona Luboteni, Edi Luboteni and Bashkim Spahiu (hereinafter, the Applicants), represented by lawyer Mr. Mas-har Pirana.

Challenged decisions

2. The Applicants request constitutional review of Judgment AC-I-14-0314 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 Special Chamber), of 23 December 2014.

3. The challenged decision was served on the Applicants on 21 January 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment of, which allegedly violated the Applicants' right to protection of property as guaranteed by Article 1 of Protocol 1 of the European Convention on Protection Human Rights and Fundamental 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 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 July 2015, the Applicants submitted the Referral to the Constitutional Court (hereinafter: the Court).

7. On 9 August 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.

8. On 11 September 2015, the Court notified Applicants and Special Chamber of the Supreme Court of Kosovo of the registration of the Referral.

9. On 22 December 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 21 April 2009, the legal predecessors of the Applicants initiated judicial proceedings before the Municipal Court in Prizren to annul a sale-purchase contract on property.

11. The judicial proceedings went through different instances until the Appellate Panel of the Special Chamber.

12. In fact, on 23 December 2014, the Appellate Panel (Judgment AC-I-14-0314), rejected as ungrounded the Applicants' appeal.

Applicants' Allegations

13. The Applicants allege that: *"were violated their fundamental constitutional rights to protection of their right to property based on Article 22 of the Constitution of Republic of Kosovo and the rights guaranteed under Article 1 of Protocol 1 of the European Convention on Human Rights"*.

Admissibility of the Referral

14. The Court first examines whether the Applicants meet the admissibility requirements laid down in the Constitution and as further specified in the Law and Rules of Procedure.

15. In this respect, the Court refers to Article 49 of the Law which establishes:

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

16. The Court also refers to Rule 36 (1) (c) 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, or [...]."*

17. In that respect, the Court notes that the challenged Judgment was served on the Applicants on 21 January 2015. The Applicants submitted the Referral to the Court on 23 July 2015. Thus, more than 4 (four) months passed from the date of service of the Judgment on the Applicants.

18. The Court considers that the Referral is out of time.

19. Therefore, the Court concludes that, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rule 36 (1) (c) and of the Rules of Procedure, in the session held on 22 December 2015, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties and to publish it in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and

III. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	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 extension of interim measure rendered on 10 February 2016 and published on 12 February 2016

Keywords: *individual referral, request for interim measure, inadmissible referral, res judicata, right to fair and impartial trial, protection of property, Appellate Panel*

The Appellate Panel of the Special Chamber decided on a property dispute between the Applicant and third parties in favor of the Applicant and that the decision had become final *res judicata*. The third parties, meanwhile, filed appeal with the Appellate Panel which approved the appeal of the third parties and concluded that the appeal was founded, it annulled the previous decisions on the matter and found that the Special Chamber was not competent to adjudicate the matter. The Applicant appealed to the Constitutional Court mainly for violation of the principle *res judicata* by the Appellate Panel, none of the third parties had the right to complain since in the last instance they were declared as persons who were not authorized in the procedure and that the Appellate Panel was not entitled to consider their submissions. The Applicant also requested the imposition of interim measure and suspension of the court proceedings pending the final decision of the Constitutional Court.

The Constitutional Court, by assessing the circumstances of the case decided to extend the interim measure until final decision on the matter that was the subject of constitutional review is rendered.

DECISION ON EXTENSION OF 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge and
Gresa Caka-Nimani, 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 of Rights] 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 2015 the 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.

12. On 03 December 2015 the Court notified the Applicant and the Special Chamber of the Decision on Interim Measure. On the same date the Court also notified the Basic Court in Pejë/Peć branch in Deçan/Dečane, Socially Owned Enterprise (SOE) Bletaria “Apiko”, Socially Owned Enterprise (SOE) Hotel Tourist Enterprise “Iliria”, and the municipality of Deçan/Dečane of the Decision on Interim Measure.

13. On 25 January 2016 the Court received two letters from SOE Bletaria “Apiko” and SOE Hotel Tourist Enterprise “Iliria”, respectively, authorizing Teki Bokshi, a lawyer from Gjakova/Djakovica, to represent them before the Court. In addition, the two SOEs requested the Court to provide them with a copy of the referral and to allow them an opportunity to submit their comments on the referral.

14. On 2 February 2016 the Court responded to the request of the two SOEs of 25 January 2016, and invited them to submit their comments on the referral by 16 February 2016.

15. On 10 February 2016 the Judge Rapporteur recommended to the Court to grant an extension of the duration of the interim measure. On the same date the Court decided unanimously to grant an extension of the interim measure until 31 May 2016.

On the extension of an interim measure

16. The Court refers to its Decision on Interim Measure of 12 November 2015 in case KI 132/15.

17. The Court has granted leave to interested parties for the submission of further comments on the admissibility and merits of the case, and will be granting the Applicant the opportunity to comment on any such submissions as may be submitted to the Court.

18. 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, decides that the granting of interim measures shall be extended until 31 May 2016.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law and Rules 55 and 56 of the Rules of Procedure, on 10 February 2016, unanimously

DECIDES

I. TO EXTEND the interim measure granted on 12 November 2015, namely, that any judicial proceedings, actions or decisions of public authorities in relation to this constitutional complaint be suspended;

II. That the extension of this interim measure shall run until 31 May 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

KI41/15, Applicant Xheladin Berisha, Constitutional Review of Judgment Rev. no. 27/2015, of the Supreme Court, of 12 February 2015.

KI41/15, Resolution on inadmissibility, of 8 July 2015, published on 18 February 2016.

Key words: individual referral, right to work and exercise profession, invalidity pension, manifestly ill-founded.

The Applicant filed a request with the Pension Fund of the Kosovo Energy Corporation (hereinafter: the Employer) to recognize his right to a disability pension. The Employer approved the Applicant's request for a disability pension, starting from 1 December 2005 until 1 January 2011 (Decision no. 188/1).
On 5 January 2011 the Applicant filed a request with the Employer for the continuation of the disability pension or reinstatement to work. Since the Applicant did not receive a reply from the Employer, he filed a complaint with the Municipal Court in Prishtina on 21 January 2011.
The Applicant claimed that *"Based on the judicial decisions, from the decision of the Municipal Court to the decision of the Supreme Court, these decisions are in my favor, but until now I have not been able to realize my elementary rights from the employment relationship based on the provisions of the Constitution of the Republic of Kosovo."*
The Court ascertained that all the arguments of the applicant which were important for the resolution of the contest, were heard in correct way and that the Courts considered them in correct way that the material and legal reasons for the Decision which was objected by the Applicant, have been presented in details and that based on all foregoing, the procedures at the regular courts, taking into consideration their entirety, were correct. The Referral was declared inadmissible, as manifetly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI41/15
Applicant
Xheladin Berisha
Constitutional review of Judgment Rev. no. 27/2015 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. Xheladin Berisha (hereinafter: the Applicant), residing in the village Shtitaricë, Municipality of Vushtrri.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 27/2015 of the Supreme Court of 12 February 2015, which was served on the Applicant on 24 March 2015.

Subject matter

3. The subject matter is the constitutional review of Judgment Rev. no. 27/2015 of the Supreme Court, by which allegedly Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) has been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of 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 30 March 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 22 April 2015 the President of the Court, by Decision No.GJR. KI41/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision No.KSH. KI41/15, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Enver Hasani and Arta Rama Hajrizi.

7. On 1 June 2015 the Court informed the Applicant about the registration of the Referral and requested the Applicant to submit the power of attorney for Mr. Zanfir Kryeziu and to clarify his Referral by specifying the last decision that he challenges. On the same date, the Court sent a copy of the Referral to the Supreme Court.

8. On 4 June 2015 the Applicant replied to the Court. The Applicant notified the Court that he revoked the authorization of Mr. Zanfir Kryeziu and submitted Judgment Rev. no. 27/2015 of the Supreme Court of 12 February 2015.

9. On 1 July 2015 the President appointed Vice-president Ivan Cukalovic, as a member of the review panel replacing Ex-president Enver Hasani whose mandate as Constitutional Judge ended on 26 June 2015.

10. On 8 July 2015 the Review Panel endorsed the Report of the Judge Rapporteur and unanimously recommended to the Court the Referral to be declared inadmissible.

Summary of facts

11. On 11 November 2005 the Applicant filed a request with the Pension Fund of the Kosovo Energy Corporation (hereinafter: the Employer) to recognize his right to a disability pension.

12. On 24 November 2005 the Employer approved the Applicant's request for a disability pension starting from 1 December 2005 until 1 January 2011 (Decision no. 188/1).

13. On 5 January 2011 the Applicant filed a request with the Employer for the continuation of the disability pension or reinstatement to work. Since the Applicant did not receive a reply from the Employer, he filed a complaint with the Municipal Court in Prishtina on 21 January 2011.

14. On 27 February 2012 the Municipal Court in Prishtina (Judgment C. no. 113/11) rejected the Applicant's complaint as ungrounded. The Municipal Court held that the Employer had entirely fulfilled the obligations to the Applicant foreseen by Decision no. 188/1 of 24 November 2005. Thus, the Applicant’s claim to continue the payment of the supplementary pension until retirement age was ungrounded.

15. The Applicant filed a complaint with the Court of Appeals of Kosovo because of substantial violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.

16. On 11 December 2013 the Court of Appeals of Kosovo (Judgment Ac. no. 4585/2012) rejected the Applicant's complaint as ungrounded and upheld Judgment C. no. 113/11 of the Municipal Court in Prishtina of 27 February 2012. The Court of Appeals of Kosovo held that the employment relationship in accordance with the will of the parties was transformed into a contractual relationship where the Employer was obliged to pay

disability pension for five (5) years to the Applicant. This obligation had been fulfilled by the Employer.

17. The Applicant filed a request for revision with the Supreme Court because of substantial violation of the provisions of the contested procedure and erroneous application of the substantive law.

18. On 12 February 2015 the Supreme Court (Judgment Rev. no. 27/2015) rejected the Applicant's request for revision as ungrounded. The Supreme Court held that the Applicant was retired based on his request and he did not file any complaint with the Committee for Reconsideration of Disputes against the decision on disability pension. It further considers that the Employer had fulfilled his obligation in accordance with the Decision on Disability Pension of 24 November 2005.

Applicant's allegations

19. The Applicant state in his Referral the following *"Based on the judicial decisions, from the decision of the Municipal Court to the decision of the Supreme Court, these decisions are in my favor, but until now I have not been able to realize my elementary rights from the employment relationship based on the provisions of the Constitution of the Republic of Kosovo."*

Admissibility of the Referral

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

21. In this respect, the Court 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."*

22. The Court also refers to Rules 36 (1) (d) and 36 (2) 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:*
>
> *(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;"*

23. The Court notes that in the present case the Applicant complains that the Judgment of the Supreme Court (Rev. no. 27/2015 of 12 February 2015) has violated his right to work.

24. The Court recalls that in other cases (v. g. KI40/09) it had adjudicated the Temporary Compensation for the Termination of Employment by KEK. However, the Court notes that the current Referral KI41/15 differs from the afore-mentioned cases (v. g. KI40/09). In fact, in these cases, KEK and former employees signed an agreement on temporary compensation until the establishment of the Kosovo Invalidity Pension Fund, thus with a

reference to a uncertain date; while, in the current case KI41/15, KEK and former employees signed an agreement on temporary compensation for a five years term, thus with a reference to a certain date (See Case KI50/14, Applicant: *Shemsi Bekteshi*, Resolution on Inadmissibility of 10 November 2014).

25. In the present case, the Court notes that the regular courts have given clear reasons for their decisions and that the Applicant himself filed a request for disability pension which the Employer agreed upon for five (5) years.

26. Therefore, the Applicant has not substantiated his allegation on constitutional grounds and did not provide evidence indicating that the challenged decision violated his rights and freedoms.

27. 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 KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

28. As to the present case, the Court does not find that the relevant proceedings before the regular courts 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).

29. 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 113 (7) of the Constitution , Article 48 of the Law and Rules 36 (1) (d), 36 (2) and 56 (b) of the Rules of Procedure on 8 July 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**
Snezhana Botusharova	Arta Rama-Hajrizi

No. KI125/15, Applicants Safet Elshani and others, Constitutional Review of the Judgment, ARJ-UZVP No. 19/2015 of the Supreme Court of the Republic of Kosovo, of 28 May 2015

KI125/15, Resolution on inadmissibility, of 8 February 2016, published on 25 February 2016.

Key words: individual referral, request for interim measure, civil procedure, right to fair and impartial trial, protection of property, expropriation, rejection of the request for interim measure, manifestly ill-founded referral, inadmissible referral.

The Applicants alleged that the regular courts have violated their rights guaranteed by the Constitution of the Republic of Kosovo, namely Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property]. The Applicants also alleged the violation of their 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 and their right under Article 17 of the Universal Declaration on Human Rights. This derives from the fact that the regular courts dismissed their requests as out of time. Further on, the submissions argued that based on Article 34 of the Law No. 12/57 on Expropriations of the Federal Republic of Yugoslavia "no time-limit was sanctioned in respect of submitting a request for annulment of a decision on expropriation, alleging that they submitted their request in compliance with the provisions of the above mentioned law at the regular court.

After analysing allegations of the Applicants, the Court concluded that the facts presented by the Applicants, do not in any way justify the alleged violations of the constitutional rights invoked by the Applicants and that they have failed to substantiate their claims as to how and why their rights have been violated. As conclusion, the Referral was declared manifestly ill-founded and consequently inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI125/15
Applicants
Safet Elshani and others
Constitutional Review of the Judgment, ARJ-UZVP no.19/2015 of the Supreme Court of the Republic of Kosovo, of 28 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge

Applicants

1. The Referral was submitted by six applicants, namely Mr. Safet Elshani, Mr. Ismet Elshani, Mr. Bektash Elshani, Mr. Zymer Elshani, Mr. Mehmet Elshani and Mr. Imer Elshani, residing in Suhareka (hereinafter, the Applicants). They are represented by Mr. Zef Delhysa, lawyer practicing in Prizren.

Challenged Decision

2. The Applicants challenge the Judgment, ARJ-UZVP no.19/2015 of the Supreme Court of the Republic of Kosovo (hereinafter, the Supreme Court) dated 28 May 2015, which was served on the Applicants on 16 June 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision which rejected the Applicants' appeal filed against the Judgment (AA. No. 111/2014, of 24 February 2015) of the Court of Appeal of the Republic of Kosovo (hereinafter, the Court of Appeal) concerning the annulment of a decision on expropriation.

4. The Applicants allege that the regular courts have violated their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 21 [General Principles]; Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property]. The Applicants also allege a violation of Article 6 [Right to a Fair Trial] and Article 1 [Protection of Property] of Protocol No.1 to the ECHR; and a violation of Article 17 of the Universal Declaration on Human Rights (hereinafter, UDHR).

5. The Applicants also request from the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely to order the Municipality of Suhareka to prohibit the access, use or any other construction activity on the immovable property which is the subject of the dispute.

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 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

7. On 15 October 2015 the Applicants submitted the Referral to the Court by postal services.

8. On 5 November 2015 the President by Decision, GJR. KI125/15 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President by Decision, KSH. KI125/15 appointed the Review Panel composed of Judges Altay Suroy (presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

9. On 4 December 2015 the Court informed the Applicants of the registration of the Referral and requested that they file a power of attorney for Mr. Zef Delhysa, in case they choose to be represented by him. On the same date the Court sent a copy of the Referral to the Supreme Court.

10. On 14 December 2015 the Applicants submitted the power of attorney with the Court.

11. On 18 December 2015 the Applicants submitted an additional letter where they requested from the Court to impose an interim measure.

12. On 25 January 2016 the Court sent a letter to the Basic Court in Prishtina requesting a copy of the letter of receipt confirming the date when the Applicants received the challenged decision.

13. On 26 January 2016 the Basic Court in Prishtina submitted the requested document with the Court.

14. On 8 February 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible and to reject the request for interim measures.

Summary of facts

15. The deceased father of the Applicants had property rights over a land which is located in today's Municipality of Suhareka.

16. On 17 December 1962 the Provincial Secretariat for Financial Matters (Decision No. 03-6091/62) expropriated the land of the deceased father of the Applicants for the purpose of establishing a market for vegetables in Suhareka.

17. On 9 February 2010 the Applicants, as heirs of the land of their deceased father, submitted a request with the Municipality of Suhareka whereby they requested the annulment of the abovementioned decision on expropriation.

18. On 2 March 2010 the Directorate for Urban, Cadastral, Property and Protection of Environment of the Municipality of Suhareka (hereinafter, the Directorate of UCPP), by Decision No. 07-465-71, rejected the Applicants' request as ungrounded. It based its decision on the fact the Applicants have missed the deadline provided by the law to request such annulment.

19. The Applicants appealed the abovementioned decision before the Cadastral Agency of Kosovo (hereinafter, CAK).

20. On 20 May 2010 CAK (Decision No. 03/432/10) rejected the Applicants' appeal as ungrounded. CAK confirmed the Decision of the Directorate of UCPP by stating that the latter had respected the applicable law, according to which the interested party could not request the annulment of a decision on expropriation after 10 (ten) years have passed following the day it became enforceable.

21. Unsatisfied with the conclusion of the proceedings before the Directorate of UCPP and CAK, the Applicants initiated an administrative conflict challenging the Decision (No. 03/432/10, of 20 May 2010) of CAK.

22. On 16 January 2014, the Basic Court in Prishtina (Judgment, A. No. 569/10) rejected the claim of the Applicants as ungrounded. It reasoned that the request of the Applicants for annulment of the decision on expropriation has been submitted *"beyond any possible legal deadline"*.

23. The Applicants filed an appeal with the Court of Appeal claiming that the Judgment of the Basic Court in Prishtina had wrongly applied the material law. According to the Applicants the applicable law provided no time limit to submit a request for annulment of a decision on expropriation.

24. On 24 February 2015 the Court of Appeal (AA. no. 111/2014, of 24 February 2015) rejected the Applicants' appeal as ungrounded. It reasoned that the Basic Court of Prishtina had rightly applied the material law by applying Article 21.5 of the Law on Expropriations (Official Gazette No. 21/78). According to this legal provision, the Court of Appeal further reasoned that all interested parties could challenge a decision on expropriation within a deadline of 10 (ten) years from the moment when such decision became enforceable. It further continued that an amendment to this law provided that the deadline to submit such request was reduced to 5 (five) years.

25. Against the abovementioned Judgment of the Court of Appeal the Applicants filed a request for an extraordinary review with the Supreme Court alleging that the decision of the second instance court was taken with wrong application of the material law and contained procedural violations. They requested from the Supreme Court to annul the Judgment of the Court of Appeal and remand the case for retrial.

26. On 28 May 2015, the Supreme Court (Judgment, ARJ-UZVP. No. 19/2015) rejected the request of the Applicants for extraordinary review as ungrounded and held that:

> *"The Supreme Court of Kosovo [...] entirely admits the legal stance of the second instance court as correct and fair. [...] Pursuant to Article 21.4 of Law no. 21/78 on Expropriation [...] after the lapse of 10 years, starting from the date when the decision on expropriation became final, no request for annulling such decision can be filed. [...] Considering such situation of the case, the Supreme Court did not find any reason to render a decision different from the one rendered by the second instance court, which rejected the Claimants'* [Applicants'] *appeal as ungrounded. [...]"*

Applicant's allegations

27. The Applicants allege that the regular courts have violated their rights guaranteed by the Constitution, namely Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property]; their 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; and their right under Article 17 of the UDHR.

28. In supporting the alleged violations in respect of the right to property as guaranteed by Article 46 of the Constitution, Article 1 of Protocol No. 1 to the ECHR and Article 17 of the UDHR, the Applicants stated that: *"[...] the request of the Applicants is based on law, provisions of which have been violated by all competent organs in the concrete case [...]."*

29. In this respect they further allege that according to Article 34 of the Law No. 12/57 on Expropriations of the Federal Republic of Yugoslavia "*no time-limit was sanctioned in respect of submitting a request for annulment of a decision on expropriation*." Therefore, considering that there was no time limit, the Applicants argue that they have submitted their request in compliance with the provision of the abovementioned law.

30. Finally, the Applicants conclude by requesting the following from the Court:

> "*By this Referral, we appeal to the Constitutional Court to render a DECISION, declaring Judgment ARJ-UZVP no. 19/2015 of the Supreme Court of Kosovo, of 28 May 2015; Judgment AA. No. 111/2014 of the Court of Appeal of Kosovo, of 24 February 2015; Judgment A. no. 569/10 of the Basic Court in Prishtina – Department for Administrative Matters, of 16 January 2014; Decision No. 03/432/10 of the Kosovo Cadastral Agency, of 20 May 2010; and Decision 07 No. 465-71 of the Directorate for Urban, Cadastral, Property, and Environment Protection, of 02 March 2010, as unconstitutional, with the proposal that the violations mentioned and confirmed by the Constitutional Court, be eliminated in the retrial or reconsideration procedure."*

Admissibility of the Referral

31. The Court first examines whether the Applicants have met the requirements of admissibility as foreseen by the Constitution and further specified by the Law and Rules of Procedure.

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

> *"(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;*
> *[...]*
> *(d) the Applicant does not sufficiently substantiate his claim."*

33. As mentioned above the Applicants' allege that the Judgment (ARJ-UZVP no.19/215, of 28 May 2015) of the Supreme Court was rendered in violation of their *"right to fair and impartial trial; general principles and protection of property"* as respectively guaranteed by the Constitution, ECHR and its Protocol No. 1, and UDHR. Furthermore, the Applicants also allege that the Judgment (AA. no. 111/2014, of 24 February 2015) of the Court of Appeal and the Judgment (A. no. 569/10, of 16 January 2014) of the Basic Court in Prishtina were also rendered in violation of such rights.

34. With regards to the *"right to a fair and impartial trial"* and *"general principles"*, the Applicants merely referred to the respective articles of the Constitution and the ECHR. They did not provide any further reasoning as to how and why such rights have been violated by the regular courts.

35. With regards to the right to *"protection of property"*, the Applicants claimed that the regular courts have wrongly applied the material law since *"the applicable law did not foresee a legal deadline for submission of a request for annulment of a decision on expropriation"*.

36. In this respect, the Court notes that the Basic Court in Prishtina, the Court of Appeal and the Supreme Court have reasoned their decisions referring to the provisions of the law in force when rejecting the Applicants' request for annulment of the decision on expropriation. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

37. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicants' allegation of violations of the law allegedly committed by the Court of Appeal when it rejected his appeal filed against the Judgment of the Basic Court in Prishtina. The Supreme Court stated that: "*the second instance court has correctly applied the administrative procedure provisions, those of the Law on Administrative Conflict, and Law amending and supplementing the Law on Expropriation, since the immovable property of the Claimants* [Applicants'] *was expropriated in 1959* **[1962]**, *while the Claimants requested the annulment of the decision on expropriation after the expiry of the time limit [...].*"

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

39. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicants are not satisfied with the outcome of the proceedings in their case do not give rise to an arguable claim of a violation of their rights as protected by the Constitution, ECHR and UDHR.

40. The Court notes that the Applicants had ample opportunities to present their case before the regular courts. The issue of the applicable law has been extensively addressed by all regular courts. The Court of Appeal and the Supreme Court have responded to all claims of the Applicants as to whether the applicable law had foreseen a deadline to submit a request for annulment of a decision on expropriation or not.

41. In this respect, it is important to note that the Constitutional Court can only consider 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 Applicants had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

42. The Court notes that the reasoning referring to the request for annulment of the decision on expropriation in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal and the Basic Court in Prishtina have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

43. For the foregoing reasons, the Court considers that the facts presented by the Applicants do not in any way justify the alleged violations of the constitutional rights invoked by the Applicants and that they have failed to substantiate their claims as to how and why their rights have been violated.

44. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and should be declared inadmissible pursuant to Rules 36 (2) (b) and (d) of the Rules of Procedure.

Assessment of the Request for Interim Measure

45. The Applicants also requested from the Court to impose an interim measure, namely to order the Municipality of Suhareka to prohibit the access, use or any other construction activity on the immovable property which was expropriated in 1962.

46. In this regard, the Applicants state that:

> *"The Municipality of Suhareka as a constitutional institution of local governance was informed from the applicants that the latter have submitted a request with the Constitutional Court [...].*

The Municipality of Suhareka [...] has not invested not even a cent [EURO cent] in the land subject of the dispute, whereas 3-4 days before, [...] it has undertaken specific construction acts by leveling up the immovable property with sand so that the same is used as auto-parking. [...] the Municipality of Suhareka not only it does not wait for a decision of the Constitutional Court in the concrete case, but it has also changed the destination of the immovable property [...].”

47. Furthermore, the Applicants claim that the Municipality of Suhareka is undertaking *“illegal decisions”* which may create further *“legal complications”* with respect to this case. In the view of evading such complications that may bring to irreparable damage and in order not to generate more tension in respect of the current situation, the Applicants argue that the interim measure should be granted by the Court.

48. 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.”*

49. As emphasized above, the Applicant has not shown a *prima facie* case on the admissibility of the referral. Therefore, the request for interim measure should be rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Articles 27 and 47 (2) of the Law and Rules 36 (2) (b) and (d), 55 (4) and 56 (2) of the Rules of Procedure, on 8 February 2016, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO REJECT the Request for Interim Measures;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Arta Rama-Hajrizi

KI70/15, Applicant Nada Zvezdić, Constitutional Review of Decision C-III-12-1681, of the Specialized Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters, of 4 November 2013.

KI70/15, Resolution on inadmissibility, of 25 January 2016, published on 25 February 2016.

Key words: individual referral, civil procedure, right to fair and impartial trial, equality before law, right to legal remedies, judicial protection of rights, protection of property, premature referral, inadmissible referral.

In this case, the Applicant mainly complained about the delays of resolution of the property claims which are pending for 12 (twelve) years at the regular courts, by alluding on violation of 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], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], 53 Article [Interpretation of Human Rights Provisions], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo, and Article 6.1, in conjunction with Article 13, of the European Convention on Human Rights

In this case, the Court in accordance with the principle of subsidiarity considered that the regular courts should be given the possibility of finally deciding on the matter under their consideration. Therefore, the Referral was considered premature and consequently, inadmissible.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI70/15
Applicant
Nada Zvezdić
Constitutional review of Decision C-III-12-1681, of the Specialized Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters,
of 4 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
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral is submitted by Ms. Nada Zvezdić, residing in Kragujevac, Republic of Serbia (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Decision (C-III-12-1681, of 4 November 2013) of the Specialized Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo related matters (hereinafter, the Specialized Panel).

3. The Applicant has not mentioned the date of service of that challenged decision.

Subject Matter

4. The subject matter of this Referral is the constitutional review of the challenged decision , which allegedly violated the rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), and Article 6.1, in conjunction with Article 13, of the European Convention on Human Rights (hereinafter, the ECHR).

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, in conjunction with Article 22 and 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 3 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 appointed Judge Almiro Rodrigues as Judge Rapporteur and the members of the Review Panel, composed of Judges Altay Suroy (Presiding), Bekim Sejdiu (member) and Arta Rama-Hajrizi (member).

8. On 13 September 2015, the Court informed the Applicant about the registration of the Referral. A copy was sent to the Specialized Panel.

9. On 7 October 2015, the Court requested from the Applicant to submit additional information and clarification within a deadline of seven (7) days.

10. The Applicant has not submitted the required information and clarification.

11. On 25 January 2016, 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 8 January 1998, the Applicant, together with 10 (ten) other individuals, filed lawsuits with the Municipal Court in Gjakova (P. no. 1402/92, P. no. 60/97, P. no. 2/98, and P. no. 5/98) against the respondents JSC "Ereniku", SOE "Prodhimtaria Primare" Gjakova and the Municipality of Gjakova. They requested the annulment of the contract on gift of immovable properties and confirmation of their ownership, which is now registered in the name of the first respondent JSC "Ereniku".

13. On 23 August 2012, the Municipal Court in Gjakova (Decision C. no. 85/2007), declared itself incompetent to resolve the claim and decided to refer the case to the Specialized Panel. The case was in fact referred to the Specialized Panel on 22 October 2012.

14. On 4 November 2013, the Specialized Panel (Decision C-III-12-1681) decided that *"the proceedings in the claim of the claimant, Aleksander Zvezdic and others, against the respondent 'Ereniku' is suspended until the Special Chamber determines the status of the respondent 'Ereniku', by final and enforceable decision in case no. SCC-08-0124"*.

15. Moreover, the Specialized Panel explained that "*The Special Chamber has a pending case which concerns the legal status of the respondent SOE 'Ereniku'. The claim is registered under number SCC-08-0124. [...] ...Therefore, firstly should be determined the legal status of the respondent 'Ereniku' in order to know definitively if 'Ereniku' is a SOE; therefore, if it is under the administration authority of the Privatization Agency of*

Kosovo, so that the Special Chamber may decide whether the respondent may have legal status of respondent in a claim with the Special Chamber, which is one of the most important elements of the claim eligibility criteria".

16. In addition, the Specialized Panel stated that, *"In accordance with Article 10.6 of the Law 04/L-033 on the Special Chamber, a party shall have the right to appeal any Judgment or decision (...) to the appellate panel (...) within twenty-one (21) days".*

Applicant's allegations

17. The Applicant mainly complains about the delays of resolution of the property claims which are pending for 12 (twelve) years.

18. Moreover, the Applicant, *inter alia*, alleges that "*if the immovable properties that are subject of the disputes are sold in the privatization tendering procedures through the Privatization Agency of Kosovo in Prishtina, the claims shall lose their subject matter and we shall be deprived of our immovable property as a consequence of the lack of action by the courts that review our cases".*

19. The Applicant concludes that the submission of the Referral is *"due to violation of rights to a fair trial [Article 6.1 of the European Convention on Human Rights (hereinafter: ECHR), rights to an effective legal remedy (Article 6.1 and 13 of the ECHR) and the right to a court decision within a reasonable time limit (Article 6.1 of the ECHR)".*

20. In addition, the Applicant mentions that *"We have not exhausted all legal remedies as required",* because *"It is clear that in the given case the exhaustion of available legal remedies would be ineffective".*

Admissibility of the Referral

21. The Court first examines whether the Referral fulfils procedural admissibility requirements laid down in the Constitution and as further specified in the Law and Rule of Procedure.

22. The Court preliminarily notes that no date of service of the challenged decision was mentioned. However, due to the nature of the complaint (non exhaustion), the Court considers that the omission is irrelevant for the decision to be taken.

23. The Court further notes that the Applicant complains on the delays of the proceedings, namely the delay of property claim decision by the courts, referring to various constitutional provisions related to fundamental human rights guaranteed by Chapter II of the Constitution.

24. In this context, the Court considers that certain requirements must be met in relation to the allegation on a violation of the right to a court decision within a reasonable time, such as: the complexity of the case, the conduct of the Applicant, the conduct of the court or administrative authorities in relation to the requests of the Applicant, as well as the existence of connection between various procedures.

25. The Court considers that it is up to the Applicant to substantiate the allegation, and to present relevant and pertinent evidence, in order for the complaint to be grounded.

26. However, the Applicant failed to substantiate and prove her allegations. In fact, the Applicant does not show that she complained before the regular court for the length of proceedings. Moreover, the Applicant has not filed an appeal with the Appellate Panel against the decision on suspending the case and consequently delaying a solution in her case.

27. Therefore, the Court cannot assess whether the Applicant's allegations are grounded and constitute the constitutional basis for violation of her right to an effective legal remedy and the right to a judicial decision within a reasonable time.

28. 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".*

29. 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".*

30. In addition, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which foresees:

> *"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".*

31. In this regard, the Court notes that the Specialized Panel (Decision C-III-12-1681, of 4 November 2013) suspended the adjudication of the case until deciding on the status of the respondent JSC "Ereniku" (pending case SCC-08-0124) by final and executable judgment.

32. The Court notes that the Applicant is aware of the criteria of exhaustion of legal remedies required by Article 113.7 of the Constitution and 47.2 of the Law. However, the Applicant immediately filed the Referral with the Court alleging that the "*available legal remedies would be ineffective*".

33. Regarding this allegation, the Court notes that the Specialized Panel explained that the case "*is suspended until the Special Chamber determines the status of the respondent 'Ereniku'*". Thus the Specialized Panel considered that a decision cannot be made in the Applicant's case without having previously determined the status of the respondent 'Ereniku'. Therefore, the reference made by the Applicant to the cases of the ECtHR cannot be applicable to the circumstances of her case.

34. The Court considers that the Applicant's case has not yet been finally decided by the Specialized Panel, due to reasons related with the complexity of the case.

35. In that respect, the Court reiterates that, in accordance with the principle of subsidiarity, the regular courts should be given the possibility of finally deciding on the matter under their consideration. This means that an alleged violation of human rights in general should not be allowed to reach the Constitutional Court, without being previously reviewed by the regular courts.

36. The principle of exhaustion of legal remedies (related with the subsidiarity principle) requires that the Applicant has exhausted all legal remedies in the regular courts proceedings before coming to the Court. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for an eventual violation of constitutional rights. This is an important aspect of the subsidiary character of the constitutional referral. (See Resolution on Inadmissibility in Case KI07/09, *Demë Kurbogaj and Besnik Kurbogaj*, Constitutional review of Judgment Pkl. no. 61/07, of the Supreme Court, of 24 November 2008, paragraph 18. Resolution on Inadmissibility in case KI-41/09, AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, of 21 January 2010, and, *mutatis mutandis*, ECtHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).

37. Therefore, the Court finds that, pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, the Referral is premature and thus is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47.2 of the Law, Rule 36 (1) (b) of the Rules of Procedure, on 25 January 2016, 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

KI126/15, Applicant: Hajzer Aliu, Constitutional review of Judgment Rev. no. 103/2015 of the Supreme Court of Kosovo, of 6 May 2015

KI126/15, resolution on inadmissibility of 26 January 2016, published on 29 February 2016

Key word: *individual referral, adverse possession (usucapio), judicial protection of rights, right to fair and impartial trial, protection of property, manifestly ill-founded*

On 6 May 2015, the Supreme Court by Judgment (Rev. no. 106/2015) rejected the request for revision and upheld Judgment (Ac. No. 1824/2012) of the Court of Appeal of Kosovo whereby the legal-property dispute concerning the confirmation of the property right over the construction land, which was registered as socially-owned property of the Municipality of Skenderaj, was resolved.

In essence, the Applicant alleged that he had acquired the ownership by adverse possession (usucapio) on public property. All the Applicant's allegations essentially consist of erroneous application of Article 29 (LBPR) and that due to such an erroneous interpretation of the law, Articles 31, 46, 53 and 54 of the Constitution and Article 6 of the Protocol 1 of the ECHR were violated.

The Court considered that all the Applicant's arguments, which were relevant to the resolution of the dispute, were properly heard and that they were duly examined by the courts, that the material and legal reasons for the decision he challenges were examined in detail and that, based on the above, the proceedings before the regular courts, viewed in their entirety, were fair. The referral was declared inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI126/15
Applicant
Hajzer Aliu
Constitutional review of Judgment Rev. nr. 106/2015
of the Supreme Court of Kosovo, of 6 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
Selvete Gërxhaliu, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Hajzer Aliu from Skenderaj (hereinafter: the Applicant) who is represented by lawyer Mr. Adem Vokshi from Mitrovica.

Challenged decision

2. The Applicant challenges Judgment (Rev. nr. 106/2015 of 6 May 2015) of the Supreme Court of Kosovo, which was served on him on 25 June 2015.

Subject matter

3. The subject matter is the request for constitutional review of the abovementioned Judgment of the Supreme Court of Kosovo. The Applicant considers that in the proceedings before the regular courts were violated Article 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 of the 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, 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 October 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 November 2015 by Decision GJR. KI126/15, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision KSH. KI126/15, the President appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

7. On 24 November 2015 the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. On 26 October 2016, 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

9. On an unspecified date in 1983, the construction land that was registered as a socially owned enterprise of the Municipality of Skenderaj was given in use to the Working Organization "Prvi Maj" in order to carry out the activity of production of the construction bricks.

10. The legal representative of the Working Organization "Prvi Maj" (hereinafter: WO "Prvi Maj") was at the time the Applicant.

11. WO "Prvi Maj" in accordance with the previously issued construction permit built a plant for the production of the construction bricks in the construction land that was registered as a social ownership of the Municipality of Skenderaj.

12. On an unspecified date, the Applicant built without a construction permit the residential building, a house of 133.80 m2 on the building land which was given for use to WO "Prvi Maj", and which was registered as a social ownership of the Municipality of Skenderaj.

13. On an specified date in 2009, the Applicant filed a lawsuit with the Municipal Court in Skenderaj, requesting that it be confirmed that the Applicant by adverse possession as a conscientious holder became owner of the cadastral plots whereon he built the residence premises, a house with surface area of 133,80 m2.

14. On 24 June 2010, the Municipal Court in Skenderaj by Judgment (C.no.195/2009) rejected as unfounded the Applicant's lawsuit in its entirety, reasoning that:

    "*Article 29 of the Law on Property-Legal Relationships of SFRY [...] clearly provides that the property right over the public property is not acquired by adverse possession*"

15. Within legal deadline the Applicant filed an appeal with the Court of Appeal of Kosovo against Judgment (C no. 195/2009) of the Municipal Court in Skenderaj.

16. On 2 September 2014 the Court of Appeal of Kosovo, by Judgment (Ac. no. 1824/2012) rejected as ungrounded the appeal of the Applicant and upheld Judgment (C no. 195/2009) of the Municipal Court in Skenderaj of 24 June 2010.

17. Within legal deadline the Applicant filed a request for revision with the Supreme Court of Kosovo against Judgment (Ac. no. 1824/2012), of the Court of Appeal.

18. On 6 May 2015 the Supreme Court by Judgment (Rev. no. 106/2015) rejected the request for revision and upheld Judgment (Ac. No. 1824/2012) of the Court of Appeal of Kosovo with a detailed reasoning.

Applicant's allegations

19. The Applicant alleges that by the above-mentioned judgments in the proceedings before the regular courts were violated Article 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 of the Protocol 1 of the European Convention on Human Rights (hereinafter: the ECHR).

20. The Applicant essentially alleges that the regular courts have incorrectly applied Article 29 of the Law on Basic Property Relations of SFRY, because *"by Article 16 of the Law on Amendment and Supplement of the Law on Legal-Property Relationship of SFRY the Article 29 of this law in 1996 was repealed"*.

21. The Applicant alleges that by Article 16 of the Law on Amendment and Supplement of the Law on Basic-Property Relationship of SFRY was deleted a provision that prohibits the acquisition of the ownership by adverse possession (*usucapio*) on public property.

22. Further, the Applicant states that under Article 21 (LBPR) a possibility of acquiring ownership *by "building on someone else's land,"* and considering that Article 29 (LBPR) was abolished then there is a possibility of acquiring property on the social land.

23. The Applicant as a legal basis for the recognition of property rights mentions Article 22 (LBPR), which provides that "*...A person who builds a new object using his/her material and work shall acquire the property right over that object. The property right over an object belongs to the owner of whose material, based on legal affair, such an object has been built by another person ....".*

24. The Applicant requests the Court to declare his Referral admissible and to determine the following:

> *"To hold that there has been a violation of Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo, as read in conjunction with Article 1 [Right to Property] of Protocol 1 of the European Convention on Human Rights.*
> *To hold that there has been a violation of Article 31 of the Constitution [Right to Fair and Impartial Trial], as read in conjunction with Article 6 of the European Convention on Human Rights [Right to a Fair Trial).*
> *To declare invalid Judgment Rev. no. 106/2015, of the Supreme Court of Kosovo in Prishtina, of 06.05.2015, and Decision Ac. no. 1824/2012, of the Court of Appeas of*

Kosovo in Prishtina, of 02 September 2014, as well as Judgment C. no. 195/2009, of the Municipal Court in Skenderaj, of 24.06.2010 ".

Assessment of admissibility of the Referral

25. The Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

26. The Court needs also to examine Article 48 of the Law which stipulates:

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

27. Moreover, the Court recalls the Rule 36 (2) (b) of the Rules of Procedure, which stipulates:

„(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 all the Applicant's allegations essentially consist of erroneous application of Article 29 (LBPR) and that due to such an erroneous interpretation of the law were violated Articles 31, 46, 53 and 54 of the Constitution and Article 6 of the Protocol 1 of the ECHR.

29. Further, the Court notes that the Applicant presented these same allegations also in the proceedings upon the request for revision before the Supreme Court of Kosovo. The Supreme Court by Judgment (Rev. no. 106/2015) of 6 May 2015, provided a detailed explanation of the manner in which the Court applied the procedural and the substantive law:

"...The claimant stated that he has been using the challenged immovable property since 1983, but until the amendment of the LBLPR in 1996, the property right cannot be acquired by adverse possession, whereas since 1996 until the time of filing claim has not passed the time provided and the legal requirements were not provided for acquisition of property and the right to use of challenged immovable property, therefore, the Supreme Court assessed as ungrounded the allegation that the substantive law was erroneously applied ".

30. The Applicant essentially challenges the way the procedural and substantive law was applied, and which was reasoned by the regular courts in three instances. This conclusion was reached by the regular courts, after detailed examination of all the arguments presented by the Applicant and at the same time all three instances emphasize that:

"In the present situation, the claimant was aware as of the beginning that he was constructing on someone else's land, which is public property, thus, it cannot be considered that he did it in good faith" (bona fides).

31. The Applicant was given the opportunity at various stages of the proceedings to present arguments and evidence he considered relevant to his case. At the same time, he had the opportunity to effectively challenge the arguments and evidence presented by the opposing party and to challenge the interpretation of the law as erroneously interpreted before the Municipal Court, the Court of Appeal of Kosovo in Prishtina and the Supreme Court of Kosovo in the regular court proceedings.

32. The Court considers that all the Applicant's arguments, which were relevant to the resolution of the dispute, were properly heard and that they were duly examined by the courts, that the material and legal reasons for the decision he challenges were presented in details and that, based on the above, the procedure before the regular courts, viewed in entirety, was fair.

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

34. Although the Applicant alleges that his rights have been violated by erroneous determination of the facts and by erroneous application of the law by the regular courts, he did not indicate how the abovementioned decision violated his constitutional rights.

35. The Court after reviewing the proceedings in entirety has not found that the relevant proceedings were in any way unfair or arbitrary (see, *mutatis mutandis, Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).

36. The Court considers that the admissibility requirements have not been met. The Applicant failed to present and substantiate claims that the challenged decision violated his constitutional rights and freedoms.

37. Therefore, the Referral is manifestly ill-founded on constitutional grounds 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, Article 20 and 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, on 26 January 2016, 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**
Ivan Čukalović	Arta Rama-Hajrizi

KI55/15, Applicant Elife Murseli, Request for Reconsideration of Resolution on inadmissibility KI159/14, of the Constitutional Court of the Republic of Kosovo, of 14 April 2015.

KI55/15, Decision to reject the referral of 18 December 2015, published on 29 February 2016.

Key words: individual referral, request for reconsideration, civil procedure, right to fair and impartial trial, right to work, rejection of referral.

The Applicant alleged among others that by Resolution on inadmissibility of case KI159/14, the Constitutional Court makes the decision of regular courts lawful, thus, according to her, unlawful proceedings become unconstitutional. The Applicant alleged violation of the right to fair trial which is guaranteed by Article 31 of the Constitution and violation of the right to work and exercise profession, guaranteed by Article 49 of the Constitution.

The Court, in this case found that the Applicant, in the present Referral for reconsideration of Resolution on inadmissibility of the Constitutional Court, has not presented any new fact or evidence, on the basis of which an issue that had not been considered or that was neglected in the previous proceedings before the Court would now be considered. On all issues raised in this Referral, the Court has already decided in all previous referrals filed by the Applicant. As a conclusion, the Court considered that the Applicant's Referral is a repetition of a previous Referral on matters already decided by the Court.

DECISION TO REJECT THE REFERRAL

in
Case no. KI55/15
Applicant
Elife Murseli
Request for reconsideration of Resolution on Inadmissibility KI159/14 of the Constitutional Court of the Republic of Kosovo, of 14 April 2015
CONSTITUTIONAL COURT OF THE REPUBLIC 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 Mrs. Elife Murseli (hereinafter: the Applicant), from village Doganaj, Municipality of Kaçanik, who is represented by Mr. Rifat Abdullahi, a lawyer from Ferizaj.

Challenged decision

2. The Applicant challenges the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) in Case KI159/14, of 14 April 2015.

Subject matter

3. The subject matter is the reconsideration of the Court's Resolution on Inadmissibility in Case KI159/14 regarding alleged violations of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo.

4. The Applicant requests from the Court to hold a hearing.

Legal basis

5. 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: Law).

Proceedings before the Court

6. On 30 April 2015 the Applicant submitted the Referral to the Court.

7. On 5 May 2015 the Applicant submitted an additional document the Court.

8. On 1 June 2015 the Applicant submitted an additional document to the Court.

9. On 29 June 2015 the President of the Court by Decision no. GJR. KI55/15 appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI55/15 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues dhe Ivan Čukalović.

10. On 22 July 2015 the Court informed the Applicant about the registration of the Referral and requested from her to submit a power of attorney for Mr. Rifat Abdullahi.

11. On 5 August 2015 the Applicant submitted the power of attorney as requested by the Court.

12. On 18 December 2015, after considering the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Referral.

Summary of the facts

13. The Court notes that the facts in the present Referral are the same as in the summary of facts established in Case KI159/14.

Summary of facts regarding Resolution on Inadmissibility in Case KI159/14 of the Constitutional Court, of 14 April 2015

14. On 24 October 2014 the Applicant, Mrs. Elife Murseli, submitted a Referral to the Court, requesting constitutional review of Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, dated 5 May 2014.

15. The Applicant in Case KI159/14 had alleged that by the Decision (Ac. No. 1235/2014) of the Court of Appeals of Kosovo her rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo were violated.

16. The Court in Case KI159/14 assessed that Decision AC. no. 1235/2014 of the Court of Appeals of Kosovo of 5 May 2014, and Decision E. no. 269/13 of the Basic Court in Ferizaj - Branch in Kaçanik of 4 March 2014, in their detailed reasoning, had responded to the Applicant's allegations with respect to the request for reinstatement to work and the property claim in the amount of €9.351,30, and on the reasons for the application of the pertinent provisions of the procedural and substantive law.

17. Consequently, the Court did not find any violation of the Applicant's constitutionally guaranteed rights, in Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 2014.

18. Based on the facts and circumstances presented in Referral no. KI159/14, on 14 April 2015, the Court decided to declare the Applicant’s Referral inadmissible as manifestly ill-founded.

Applicant's allegations

19. In the present Referral, the Applicant alleges that the Constitutional Court with its Resolution on Inadmissibility (Case KI159/14) "[...] *makes the referred court decisions lawful, thus making the unlawful and unconstitutional proceedings, which have been lasting for more than 5 years and are still continuing, lawful [...]"*

20. The Applicant thus alleges that the said Resolution has violated her constitutional rights as stated in paragraph 3 of this document.

Assessment of the Admissibility of Referral

21. 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.

22. The Court first refers to Article 116.1 [Legal Effect of Decisions] of the Constitution which provides:

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

23. In addition, 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."*

24. The Court also refers to Rule 36.3 (d) of the Rules of Procedure which provides:

> *"(3) 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;"*
> *[...]*

25. The Court notes that in the present Referral the Applicant has not presented any new fact or evidence, on the basis of which an issue that had not been considered or that was neglected in the previous proceedings before the Court would now be considered. The Court has already decided on all matters raised in this Referral.

26. Therefore, the current Referral is in essence a repetition of a Referral previously considered by the Court. The Court has no jurisdiction to decide on the same legal issues for which it has already decided. The jurisdiction of the Constitutional Court with respect to individual Referrals is clearly established in 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 (See, Naser Dragusha and 4 other employees of the Kosovo Energy Corporation, KI28/15, Decision to Reject the Referral, of 11 November 2015; Bajrush

Gashi, KI26/14, Decision to Reject the Referral, of 26 March 2015; Mentor Paqak, KI166/14, Decision to Reject the Referral, of 22 May 2015, and Bejtullah Sogojeva, KI179/14, Decision to Reject the Referral, of 13 August 2015).

27. The Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

28. With regard to the Applicant's request to hold a hearing, the Court refers to Article 20 of the Law:

> *"1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.*
>
> *2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files."*

29. The Court considers that the case files of this Referral are sufficient to decide this case as per the wording of paragraph 2 of Article 20 of the Law.

30. Therefore, the Applicant's request to hold a hearing is rejected as inadmissible.

31. In conclusion, the Court considers that the Applicant's Referral is a repetition of a previous Referral on matters already decided by the Court.

32. Consequently, in accordance with Article 116.1 of the Constitution and Rule 32 (5) of the Rules, the Referral is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 116.1 of the Constitution and Rule 32 (5) of the Rules of Procedure, in its session held on 18 December 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

KI135/15, Applicant Boban Marinković, Request for Constitutional Review of Judgment AC-I-14-0311-A0001-A0023, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 15 July 2015.

KI135/15, Resolution on inadmissibility approved on 26 January 2016 and published on 8 March 2016.

Key words: *individual referral, request for protection of human rights and freedoms, equality before law, manifestly ill-founded referral.*

The Applicant requested from the Constitutional Court the constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, which allegedly discriminated against the Applicant under Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo on the occasion of non-inclusion of the Applicant in the list of employees who have the right in a part of incomes from the privatization of "DTP Voçar".

The Court ascertained that allegations for discrimination presented by the Applicant are ungrounded, and on the other hand, it highlights that the discrimination exists only where there is a difference in treatment of the individual and if the treatment has no objective and reasonable justification, which was not proved by the Applicant.
The Court considers that the Applicant has not substantiated his allegations nor he has submitted any prima facie evidence indicating a violation of the rights guaranteed by the Constitution. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI135/15
Applicant
Boban Marinković
Request for constitutional review of Judgment AC-I-14-0311-A0001-A0023, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 15 July 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Boban Marinković from Graçanica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment AC-I-14-0311-A0001-A0023 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of the Special Chamber), of 15 July 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Appellate Panel of the Special Chamber, which allegedly discriminated against the Applicant under Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. Article 113.7 of the Constitution and Article 49 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.

Proceedings before the Constitutional Court

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

6. On 8 December 2015, the President of the Court by Decision GJR. KI135/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI135/15, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 16 December 2015, the Court informed the Applicant and the Appellate Panel of the Special Chamber about the registration of the Referral.

8. On 28 January 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant was an employee of the SOE Voćar (hereinafter: „SOE Voćar“) until 1999.

10. On 2 May 2007, the „SOE Voćar“ was privatized.

11. On 21 July 2011, the Privatization Agency of Kosovo published the provisional list of employees who are entitled to a share of proceeds from the privatization of the „SOE Voćar“, in which the Applicant was not included.

12. On 10 August 2011, the Applicant filed an appeal with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber).

13. In the appeal, in addition to the allegation that he is a victim of discrimination, the Applicant submitted to the Special Chamber the decision on the establishment of the employment relationship with „SOE Voćar“no. 48 of 1998.

14. On an unspecified date in 2014, 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 Special Chamber) rendered Judgment [SCEL-11-0045], which approved the Applicant’s appeal as grounded and obliged the Privatization Agency to include the Applicant in the final list of employees who exercise their right to a share of proceeds from the privatization of „SOE Voćar“.

15. On an unspecified date, the Privatization Agency appealed to the Appellate Panel of the Special Chamber against the Judgment of the Specialized Panel of the Special Chamber [SCEL- 11-0045], in which it stated: *„The claimant (the Applicant) did not submit his work booklet, he did not prove that he was discriminated against in any way, thus, he did not confirm that he was registered as an employee of the enterprise at the time of its privatization“,* which is in accordance with Article 10.4 of UNMIK Regulation 2003/13 (*see paragraph 16 of the report*).

16. On 15 July 2015, the Appellate Panel of the Special Chamber rendered Judgment [AC-I-14-0311-A0001-A0023], which approved the appeal of the Privatization Agency and annulled Judgment [SCEL-11-0045] of the Specialized Panel of the Special Chamber.

Relevant Law

17. Article 10.4 of UNMIK Regulation 2003/13 provides, *"For the purpose of this section an employee shall be considered as eligible (to 20%), 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 (and eligible to 20%), had they not been subjected to discrimination."*

Applicant's allegations

18. The Applicant alleges in his Referral that *„based on complete documentation which he submitted to the Privatization Agency and the Special Chamber, and based on which his previous appeal was characterized as grounded, he is entitled to the proceeds from the privatization of SOE Voćar"*.

19. The Applicant addresses the Court with the request: *„that, as a regular employee of „SOE Voćar", he be included on the final list of employees of „SOE Voćar"entitled to the proceeds from privatization"*.

Admissibility of the Referral

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

21. In this respect, Article 113, paragraph 7 of the Constitution stipulates:

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

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) (b) of the Rules of the 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".

24. The Court, in analyzing the arguments of the Applicant in terms of violation of the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: the ECHR), notes that the Applicant has built his referral on allegations of discrimination, which is within the scope of Article 24 of the Constitution [Equality Before the Law) and Article 14 of the ECHR.

25. Assessing the reasons for the constitutional complaint with respect of Article 24 of the Constitution, the Court emphasizes that discrimination exists only where there is a difference in treatment of the individual and if the treatment has no objective and reasonable justification.

26. Moreover, in order to find discrimination, it is not sufficient that the Applicant generally claims that he has been treated in an unequal manner, but he must also indicate the grounds for this inequality.

27. The Court further refers to the legal position of the European Court of Human Rights that "*discrimination that is "treating differently, without an objective and reasonable justification, persons in relevantly similar situations*" (Judgment: *Willis v. the United Kingdom*, no. 36042/97, paragraph 48, ECHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, paragraph 63, *D.H. and others v. Czech Republic*, paragraph 44)."

28. The Constitutional Court is of the view that in the conducted proceedings, there are no facts or circumstances that would in any way indicate that in the proceedings before the Appellate Panel of the Special Chamber the Applicant's human rights or freedoms guaranteed by the Constitution or the ECHR have been violated. Therefore, the Constitutional Court finds a reference to a violation of Article 24 of the Constitution regarding the prohibition of discrimination, as ungrounded.

29. Therefore, the Court considers that the Applicant has not substantiated his claims, nor he has submitted any *prima facie* evidence indicating a violation of the 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).

30. In sum, the Court holds that the requirements according to which the Applicant's Referral is considered from the aspect of violation of the rights and freedoms guaranteed by the Constitution and the ECHR are not met.

31. Accordingly, 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, pursuant to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, on 26 January 2016, 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**

Altay Suroy Arta Rama-Hajrizi

KI129/15, Applicant Rrahim Ramadani, Constitutional Review of Judgment CML. no. 6/2014, of the Supreme Court of Kosovo, of 24 February 2015.

KI129/15, Resolution in inadmissibility of 26 January 2016, published on 8 March 2016.

Keywords*: individual referral, right to work and exercise profession, out of time referral.*

By Decision CML. No. 6/2014, the Supreme Court of Kosovo rejected the request of the Applicant for revision of the appeal filed against Decision of IOBK with the Court of Appeal, as ungrounded.

The Applicant claims that the Supreme Court violated his rights under Article 49 of the Constitution, because it approved the Decision of courts of lower instances for the non-payment of difference in salary, which is provided for in paragraph II of the IOBK decision.

The Constitutional Court ascertained that from the last Decision issued by the regular courts until the day of submission to the Constitutional Court, more than 4 (four) months have passed, consequently the Referral was not filed within the legal deadline defined by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure. Based on this, the Court concluded that the Referral of the applicant is inadmissible because it was filed out of time.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI129/15
Applicant
Rrahim Ramadani
Constitutional review of Judgment CML. no. 6/2014, of the Supreme Court of Kosovo, of 24 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
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Rrahim Ramadani (hereinafter: the Applicant), from Prishtina.

Challenged decision

2. The Applicant challenges Judgment CML. no. 6/2014 of the Supreme Court of Kosovo, of 24 February 2015, which was served on him on 23 March 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment, which allegedly 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 28 October 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 November 2015, the President of the Court by Decision No. GJR. KI129/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI129/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 24 November 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral, and requested at the same time from the Applicant and the Court the evidence on the service of the challenged Judgment.

8. On 26 January 2016, 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. The Applicant had established employment relationship as a teacher until 30 September 2007.

10. On 14 December 2007, due to new reorganization and systematization of education, the executive authority of the Municipal Assembly in Prishtina rendered Decision [01. no. 24385] on termination of the Applicant's employment relationship.

11. On an unspecified date, the Applicant filed appeal with the Ministry of Education, Science and Technology (hereinafter: MEST), and with the Independent Oversight Board of Kosovo (hereinafter: the IOBK) against Decision [01. no. 24385] of the Municipality of Prishtina.

12. On the Applicant's appeal, first MEST and then the IOBK rendered decisions, which annulled Decision [01. No. 24385] of the Municipality of Prishtina and ordered to include the Applicant in the new systematization plan and to find him another job position.

13. On 14 October 2008, the Municipality of Prishtina and the Applicant concluded an employment contract, by which the Applicant was assigned to a new job position.

14. On an unspecified date, the Applicant filed a claim with the Basic Court against the Municipality of Prishtina, by which he requested the compensation for unpaid salaries, differences in salaries, benefits and taxes, with a payment of an aggregate calculated amount, proposed by him.

15. In fact, on 24 February 2015, the Supreme Court by [Judgment CML. no. 6/2014], rejected as ungrounded the Applicant's request for revision of the Judgment of the Court of Appeal, of 26 August 2014.

Applicant's allegations

16. The Applicant claims that the Supreme Court violated his rights under Article 49 of the Constitution, by not allowing the payment of difference in salary, which is provided for in paragraph II of the IOBK decision.

17. The Applicant addresses the Court with the request: *„I want to be paid the difference from 01.10.2008 until now, for 85 months. I want to be reinstated to my previous job position or to remain in this job position for another 4 years until I retire"*.

Admissibility of Referral

18. 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.

19. 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."*

20. 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…"*

21. 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."*

22. The Court notes that the Judgment [CML.br. 6/2014], of the Supreme Court was rendered on 24 February 2015 and served on the Applicant on 23 March 2015; which can be seen from the evidence that the Supreme Court had delivered to the Court.

23. The Applicant submitted his Referral to the Court on 28 October 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.

24. 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).

25. 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, pursuant to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 26 January 2016, unanimously:

DECIDES

V. TO DECLARE the Referral Inadmissible;

VI. TO NOTIFY this Decision to the Parties;

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

VIII. This Decision is effective immediately

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Arta Rama-Hajrizi

KI143/15, Applicant: Donika Kadaj-Bujupi, constitutional review of Decision PN1. No. 2059/2015 of the Court of Appeal, of 23 November 2015

KI143/15, decision to dismiss the referral and reject the request for interim measure of 8 February 2016, published on 10 March 2016

Keywords: *individual referral, immunity, moot referral, request for interim measure.*

The Applicant claimed that the challenged Decision of the Court of Appeal has violated her right to immunity guaranteed by paragraphs 1 and 2 of Article 75 of the Constitution. She alleged that a deputy of the Assembly cannot be arrested nor detained while performing his/her duties and responsibilities in the Assembly. She also alleged that *"the Court of Appeal acted in a discriminatory manner against the Applicant."*

In the meantime, on 9 December 2015, the Supreme Court (Judgment, PML 277/2015) partially approved the Applicant's request for protection of legality, replacing the measure of detention with the measure of house arrest until 18 December 2015.

The Court further noted that the challenged Decision of the Court of Appeal is not anymore a final decision of public authority for the purpose of having filed a Referral with the Court. The Court noted that the Judgment of the Supreme Court considered and assessed the challenged Decision of the Court of Appeal. Then, the Judgment of the Supreme Court is now the final decision on the contested subject matter. The Court concluded that the Referral does not present anymore a legal dispute, as the Judgment of the Supreme Court resolved the matter.

DECISION TO DISMISS THE REFERRAL
AND REJECT THE REQUEST FOR INTERIM MEASURE
In
Case No. KI143/15
Applicant
Donika Kadaj-Bujupi
Constitutional review of
Decision PN1. No. 2059/2015 of the Court of Appeal,
of 23 November 2015

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
Selvete Gërxhaliu, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Applicant is Mrs. Donika Kadaj-Bujupi (hereinafter, the Applicant), a deputy of the Assembly of the Republic of Kosovo (hereinafter, the Assembly), who is represented by Mr. Arianit Koci, a lawyer.

Challenged Decision

2. The Applicant challenges Decision PN1. No. 2059/2015 of the Court of Appeal, of 23 November 2015, which upheld Decision PPRKR. No. 415/2015 of the Basic Court in Prishtina, of 18 November 2015.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly violated the rights guaranteed by Article 24 [Equality before the Law] and paragraph 1 and 2 of Article 75 [Immunity] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

4. In addition, the Applicant requests the Court to impose an interim measure, *"by which would be immediately terminated the measure on detention on remand against Mrs. Donika Kadaj-Bujupi until the decision on merits on this matter is rendered"*.

Legal Basis

5. The Referral is based on Article 113.7 and 116.2 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 29 and 54 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 2 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 3 December 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

8. On 4 December 2015, the Court informed the Applicant of the registration of the Referral and requested her to clarify whether any judicial proceedings before the regular courts are being conducted on the same matter or whether any legal remedy was filed. A copy of the Referral was sent to the Court of Appeal.

9. On 8 December 2015, the Applicant informed the Court that she has submitted a request for protection of legality to the Supreme Court.

10. On 14 December 2015, the Court requested additional information from the Applicant to update the Court on the course of the proceedings regarding the extraordinary legal remedy, including an eventual final decision.

11. On 22 December 2015, the Applicant informed the Court that the Supreme Court issued a Judgment (PML 277/2015, of 9 December 2015) on her request for protection of legality.

12. On 24 December 2015, the Court requested the Supreme Court to submit a copy of its Judgment PML 277/15, of 9 December 2015. On the same date, the Supreme Court provided the requested copy of its Judgment.

13. On 8 February 2015, the Court deliberated on the case and decided to dismiss the Referral.

Summary of facts

14. On 18 November 2015, the Basic Court in Prishtina (Decision PPRKR. no. 415/2015) imposed on the Applicant the measure of detention on remand from 18 November 2015 until 18 December 2015.

15. The Applicant filed an appeal with the Court of Appeal, alleging that her actions should not be qualified as a criminal offence, but as political action for which she enjoys parliamentarian functional immunity.

16. On 23 November 2015, the Court of Appeal (Decision PN1. no. 2059/2015) rejected as ungrounded the Applicant's appeal, explaining that the Basic Court in its decision has provided sufficient reasoning regarding the existence of the suspicion of having committed the criminal offense, and that the matter of immunity of the deputies had already been dealt with by the Constitutional Court in its Judgment in the case KO98/11, of 20 September 2011.

17. On 3 December 2015, the Court became aware that the Applicant also filed with the Supreme Court a request for protection of legality.

18. On 8 December 2015, following the Court's request for additional information on that filed request, the Applicant informed the Court that she also filed with the Supreme Court a request for protection of legality after having filed her Referral with the Constitutional Court on 2 December 2015.

19. On 9 December 2015, the Supreme Court (Judgment, PML 277/2015) partially approved the Applicant's request for protection of legality, replacing the measure of detention with the measure of house arrest until 18 December 2015. The Supreme Court also addressed the Applicant's claim related with the alleged violation of Article 75 of the Constitution.

20. On 14 December 2015, the Court once again requested additional information on *"the progress of the procedure concerning the extraordinary remedy"*.

21. On 22 December 2015, the Applicant informed the Court that the Supreme Court rendered a Judgment, by which the detention on remand was replaced by the measure of house arrest.

22. The Court has not received any further information on the progress of other proceedings related to the Applicant's case.

Applicant's allegations

23. The Applicant claims that the challenged Decision of the Court of Appeal has violated her right to immunity guaranteed by paragraphs 1 and 2 of Article 75 of the Constitution. She alleges that a deputy of the Assembly cannot be arrested nor detained while performing his/her duties and responsibilities in the Assembly.

24. The Applicant also claims a violation of Article 24 [Equality Before the Law] of the Constitution. In this respect, she alleges that "*the Court of Appeal acted in a discriminatory manner against the Applicant*", because *"in another case in which was involved another deputy of the Assembly of the Republic of Kosovo terminated the detention on remand, by referring to Article 75, paragraph 2 of the Constitution of the Republic of Kosovo"*.

25. Furthermore, the Applicant requests the Court to impose an interim measure by terminating the detention on remand, because of the suffering of irreparable damage due to her further stay in the detention and because she is denied the right to represent the citizens of the Republic of Kosovo.

Admissibility of the Referral

26. The Court recalls that the Applicant challenged Decision PN1. No. 2059/2015 of the Court of Appeal of 23 November 2015 and also filed against that same Decision a request for protection of legality, which the Supreme Court decided on 9 December 2015.

27. The Court notes that the Applicant has not challenged before the Constitutional Court the Judgment of the Supreme Court. Moreover, the Supreme Court Judgment was delivered to the Court on its own initiative. The Court reiterates that it was up to the Applicant to

take procedural initiative, provide active assistance and present all relevant information and evidence regarding the Referral and finally substantiate her allegations. The Court cannot replace the Applicant in making her case.

28. The Court further notes that the Judgment of the Supreme Court considered and assessed the challenged Decision of the Court of Appeal. Then the Judgment of the Supreme Court is now the final decision on the contested subject matter. Therefore, the challenged Decision of the Court of Appeal is not anymore a final decision of public authority for the purpose of having filed a Referral with the Court.

29. The Court recalls that, on 4 December 2015, the Applicant was requested *"to inform the Court and to keep it informed as to whether there is any judicial proceedings pending before the regular courts on the same legal matter or whether you have filed any other legal remedy on the same legal matter"* .

30. In addition, on 14 December 2015, the Court requested the Applicant to inform on *"the progress of the procedure concerning the extraordinary remedy, including an eventual final decision"* and notified her that, *"in the absence of any information, the Court will proceed to review the Referral based on the existing case files"*.

31. The Court observes that the existing case files does not contain anymore a final decision of a public authority allegedly violating the Applicant's individual rights and freedoms guaranteed by the Constitution and subject to be challenged by the Applicant. Moreover, the Court recalls that it was up to the Applicant to clarify and precise whether and how she wanted to proceed with the Referral pending before the Court.

32. 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."*

33. The Court also refers to Article 22 (Processing Referrals) and 48 (Accuracy of the Referral) of the Law, which provide:

> Article 22
>
> 4. "*(...) The Judge Rapporteur may request additional facts that are required to assess the admissibility or grounds for the claim"*.
>
> Article 48
>
> *"In his/her referral, the claimant should accurately clarify (...) what concrete act of public authority is subject to challenge"*.

34. The Court also takes into account Rule 32 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules, which foresees:

> *(4) The Court may dismiss a referral when the Court determines a claim (...) does not otherwise present a case (...)"*.

35. In that respect, the Court notes that the Decision of the Court of Appeal cannot be considered anymore as the final Decision as it was initially challenged by the Applicant.

36. The Court considers that the Referral does not present anymore a legal dispute, as the Judgment of the Supreme Court resolved the matter.

37. Therefore, the Court determines that the subject matter of the Referral does not present a case anymore.

38. In conclusion, the Court finds that the Applicant's claim is without any object and the Referral is dismissed, in accordance with Article 113 (7) of the Constitution, Article 22 (4) and 48 of the Law, and Rule 32 (4) of the Rules.

Request for Interim Measure

39. The Court recalls that the Applicant requested the Court to impose interim measure, namely to terminate the measure of detention on remand until a decision on the merits is rendered.

40. The Applicant alleges that the approval of the interim measure is of particular importance, because of the suffering of irreparable damage and of denial of her right to represent the citizens of the Republic of Kosovo.

41. In that regard, the Court takes into account Rule 55 (4) of the Rules of Procedure, which foresees:

> *"Before the Review Panel may recommend that the request for interim measures be granted, it must find that:*
>
> > *"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral (...)".*

42. The Court also recalls that the Supreme Court, acting upon the Decision of the Court of Appeal, replaced the measure of detention on remand with the measure of house arrest.

43. In addition, on 3 December 2015, the court became aware of the Applicant having filed a request for an extraordinary legal remedy. This fact was confirmed by the Applicant on 8 December. The request for extraordinary legal remedy against the Decision of the Court of Appeal was decided by the Supreme Court on 12 December 2015.

44. Moreover, the Court notes that, as reasoned above, the Referral is dismissed as the Applicant's claim became without any object.

45. Thus, the Court considers that the request for interim measure lost its ground to be decided by the Court since the filing of the request for extraordinary legal remedy.

46. Therefore, pursuant to Rule 55 (4) of the Rules, the Applicant's request to impose interim measure is rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 22.4 and 48 of the Law, and the Rule 32 (4), 55 (4) and 56 (3) and (5) of the Rules of Procedure, on 8 February 2016, unanimously

DECIDES

I. TO DISMISS the Referral;

II. TO REJECT the request for interim measure;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI106/15, Applicant: Predrag Stojčetovič, Constitutional Review of Judgment GSK-KPA-A-035/14, of Supreme Court of Kosovo, Appellate Panel of PAK, of 13 may 2015

KI 106/15, Decision on inadmissibility of 26 January 2016, published on 10 March 2016.
Key words: individual referral, equality before law, protection of property, manifestly ill-founded referral.

The Supreme Court of Kosovo, Appellate Panel of PAK issued Judgment GSK-KPA-A-035/14, of 13 May 2015, whereby the appeal of the Applicant filed against Decision KPCC/D/R/215//2013, of the Kosovo Property Claims Commission, of 21 August 2013, was rejected as ungrounded.

Among others, the Applicant alleged that the Supreme Court of Kosovo, Appellate Panel of PAK violated the Applicant's right which is guaranteed by Constitution, equality before the law and protection of property. Further on, the Applicant alleged that in an identical factual and legal situation, the right to property on apartment was recognized to others.
The Court considers that the facts presented by the Applicant do not reason the alleged violation of constitutional rights invoked by applicant and that he did not prove sufficiently his allegation. Therefore, the Referral was declared as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI106/15
Applicant
Predrag Stojčetović
Constitutional review of
Judgment GSK-KPA-A-035/14 of the Supreme Court of Kosovo
Appeals Panel of the Kosovo Property Agency,
of 13 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 Bekim Sejdiu, Judge
Selvete Gërxhaliu- Krasniqi, Judge and
Gresa Caka- Nimani, Judge.

Applicant

1. The Referral is submitted by Mr. Predrag Stojčetović, residing in village Biti e Poshtme, Municipality of Shtërpce (hereinafter, the Applicant), who is represented by lawyer Mr. Ljubomir Pantović.

Challenged Decision

2. The Applicant challenges Judgment GSK-KPA-A-035/14 of the Appeals Panel of KPA of the Supreme Court of Kosovo (hereinafter, the Appeals Panel), of 13 May 2015, which rejected as ungrounded the Applicant's appeal filed against the decision KPCC/D/R/215//2013 of the Kosovo Property Claims Commission within the Kosovo Property Agency (hereinafter, the KPCC), of 21 August 2013.

3. The challenged Judgment was served on the Applicant on 3 July 2015.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law 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 10 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 14 September 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.

8. On 29 September 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 26 January 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court to declare the Referral as inadmissible.

Summary of facts

10. On an unspecified date, the Applicant requested to the House Property Claims Commission (hereinafter, the HPCC) the confirmation of ownership over an apartment located in Ferizaj.

11. On 30 April 2005, the HPCC (Decision HPCC/D/189/2005/C) rejected the Applicant's request. In the reasoning it is stated that "*Stojčetović did not submit any documentary evidence, by which he would prove the possession over the property, nor he confirmed the property right*".

12. The Applicant requested to the HPCC reconsideration of that decision.

13. On 15 July 2006, the HPCC (Decision HPCC/REC/66/2006) rejected again the Applicant's request for reconsideration with the same reasoning.

14. On 22 August 2007, the Applicant filed a claim with the KPCC (which replaced HPCC), requesting again the confirmation of the property right and repossession of the apartment.

15. On 21 August 2013, the KPCC (Decision KPCC/D/2015/2013) rejected the property claim, reasoning that "*the documents filed by the Applicant were not positively verified by the Executive Secretariat*". In addition, the KPCC stated that the submitted statements of three witness *"without documented evidences are insufficient to confirm the right of property over the claimed property"*.

16. On 09 December 2013, the Applicant filed an appeal with the Appeals Panel against the KPCC Decision, due to *"erroneous and incomplete finding of the facts"*.

17. On 13 May 2015, the Appeals Panel (Judgment GSK-KPA-A-035/14) rejected the appeal as ungrounded. The Appeals Panel found that "*the KPCC rendered an accurate decision, based on a detailed and accurate procedure*" and that *"there has been no violation or incomplete determination of factual situation"*.

Applicant's allegations

18. The Applicant claims that the challenged Judgment violated Article 24 [Equality before the Law] and Article 46 [Protection of Property] of the Constitution.

19. The Applicant alleges that, "*in a similar factual and legal situation the right of property was acknowledged"* to others. *"This was done in the proceeding before the HPCC, but the Supreme Court of Kosovo completely ignored this fact"*.

20. The Applicant requests the Court *"to recognize him the right to an apartment located in Ferizaj"*.

Admissibility of the Referral

21. 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.

22. In that respect, the Court refers to Article 113 of the Constitution, which establishes:

> *"7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting 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 further refers to Rule 36 of the Rules of Procedure, which 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."*

25. The Court recalls that the Applicant claims that the challenged Judgment violated Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution, alleging that his rights were violated because of "*erroneous and incomplete finding of facts"*.

26. The Court considers that the Appeals Panel thoroughly analyzed the evidence presented and the allegations made by the Applicant, reasoning in a detailed manner why his appeal was rejected.

27. In fact, the Appeals Panel noted that *"the Executive Secretariat of the KPCC was not able to provide ex officio any evidence to support the property claim of Stojçetoviq. Based on this, the KPCC has found that Stojçetoviqi did not prove any right whatsoever over the property in the claim"*. Therefore, the Appellate Panel concluded that "*the KPCC rendered correct decision, based on the detailed and accurate procedure"*.

28. Moreover, the Appeals Panel further noted that the Applicant claimed that *"the HPCC rendered a different decision in his case, although absolutely identical cases (DS003510 and DS603418), possession acquired on the same date, and in these cases the HPCC rendered a decision to their benefit"*. The Applicant also claimed that, "*regardless of the same nature of documents that were submitted in these cases by the applicants, the HPCC accepted those documents but it did not do that in his case*.

29. The Appeals Panel reiterated that it has *"no competencies over the cases of the HPCC, to review the reasoning of the decisions of HPCC or to assess their accuracy"*. Even more, the Appellate Panel noted that *"Decision HPCC/REC/66/2006 rejected the appellant's request for the reconsideration of decision HPCC/D/189/2005/C. This means that decision HPCC/D/189/2005/C is final and cannot be challenged with an appeal"*.

30. The Court notes that the conclusion of the Appeals Panel is in conformity with its jurisprudence. (See Constitutional Court, Case no.KI104/10, paragraphs 64 and 74 of the Judgment, of 10 May 2012).

31. Before the foregoing, the Court considers that the Applicant has not explained how and why the conclusion on that he *"did not prove"* his right over the property of the apartment, given in the challenged Judgment, violates his rights to equality before the law and to protection of property.

32. The Court further considers that the proceedings before the KPCC and the Appeals Panel were fair and that the decisions were entirely justified and reasoned, namely explaining that the Applicant "*did not prove any right whatsoever over the property"*. (See case *Shub v. Lithuania,* No. 17064/06, ECHR, Decision of 30 June 2009).

33. Moreover, the Applicant has not submitted any *prima facie* evidence indicating a violation of his constitutional rights. (See *Vanek vs. Republic of Slovakia*, the ECHR Decision on admissibility, no. 53363/99, of 31 May 2015).

34. In fact, the Court notes that the Applicant has not built his claim on a constitutional basis. On the contrary, he based his complaint on "*erroneous and incomplete finding of facts"*. That ground fall under the jurisdiction of the regular courts. In the end, the Applicant concluded his allegation requesting the Court to recognize him *"the right of property over the apartment located in Ferizaj"*.

35. The Court considers that this allegation and request configures a fourth instance appeal submission. In that respect, the Court reiterates that it does not act as a court of fourth instance, in respect to the decisions taken by the regular courts on establishing the facts or

applying the substantive law. 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, 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).

36. The Court further reiterates that it is not its task to consider whether the appellate Panel correctly established the facts or interpreted the applicable law (legality), but consider whether the Appeals Panel infringed individual rights and freedoms protected by the Constitution (constitutionality). (See, for example, Case No. KI72/14, Applicant *Besa Qirezi,* Judgment of 4 February 2015, para.65).

37. Moreover on this point, as a general rule, the establishment of the facts of the case and the interpretation of law are a matter solely for the regular instances whose findings and conclusions in this regard are binding on the Constitutional Court. However, where a decision of a regular court is clearly arbitrary, the Court can and must call it into question. (See *Sisojeva and Others v. Latvia,* [GC], application no. 60654/00, Judgment of 15 January 2007, para. 89).

38. Therefore, the Court concludes that the facts presented by the Applicant do not justify the alleged violation of the constitutional rights invoked by the Applicant and he has not sufficiently substantiated his claim.

39. In all, the Referral is manifestly ill-founded on a constitutional basis and thus inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 (7) of the Constitution, Article 48 of the Law and Rules 36 (1) d) and 2 d) of the Rules of Procedure, in the session held on 26 January 2016, 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

KI92/15, Applicant Naim Sejdiaj, Request for Constitutional Review of Decision AC. no. 4891/2014, of the Court of Appeal of Kosovo, of 27 February 2015.

KI92/15, Resolution on inadmissibility of 9 February 2016, published on 10 March 2016.

Key words: *individual referral, right to fair and impartial trial, judicial protection of rights, manifestly ill-founded referral.*

By Decision Ac. No. 4891/2014, the Court of Appeal of Kosovo rejected the appeal of the Applicant as ungrounded whereas it upheld the Decision of the Basic Court which allows the execution of procedure by a private enforcement agent due to unpaid debts of the Applicant to BKT.

The Applicant alleged that the challenged Decision violates his right to a fair process and right to judicial protection of rights as guaranteed by Articles 31 and 54 of the Constitution.

The Constitutional Court ascertained that the Applicant was not able to provide facts or evidence *prima facie* for reasoning his claims and that the proceedings conducted at the regular courts were not unfair or arbitrary. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI92/15
Applicant
Naim Sejdiaj
Request for constitutional review of Decision AC. no. 4891/2014, of the Court of Appeal of Kosovo, of 27 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Applicant is Mr. Naim Sejdiaj from Podujeva, who is represented by Mr. Gani Asllani, lawyer from Prishtina.

Challenged Decision

2. The Applicant challenges Decision Ac. no. 4891/2014, of the Court of Appeal of Kosovo, of 27 February 2015 which was served on the applicant on 13 march 2015.

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), under Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights].

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

Proceedings before the Constitutional Court

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

6. On 19 August 2015, the President of the Court by Decision appointed Judge Robert Carolan as Judge Rapporteur, and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 7 October 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal. On the same date, the Court sent a copy of the Referral to the National Trade Bank (BKT) as a third and interested party, requesting to send the eventual comments to the Court within the time limit provided by the Court.

8. On 20 October 2015, the Court received the BKT comments regarding the Referral.

9. On 9 February 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. In 29 June 2012, the Applicant concluded a contract with BKT for receiving a loan on behalf of a private company, with him as a sole owner, in the amount and term loan repayment as stipulated in the contract. The contract and its annexes have specified the requirements including the consequences in case of failure to repay the loan.

11. On 6 November 2013, BKT submitted to the Basic Court in Prishtina a proposal for enforcement on real estate – mortgage, against the property of the Applicant, presented as a mortgage guarantees when receiving a loan, due to non- payment of the loan installments on regular basis.

12. On 8 November 2013, the Basic Court in Prishtina, by Decision E. no. 1578/2013, allowed the proposed enforcement.

13. Against this decision, the Applicant filed the objection with the Basic Court in Prishtina. The Applicant stated that the delays in the payment of the loan, were a consequence of serious injuries of the Applicant in a traffic accident, and he challenged the manner of calculation of the interest on the principal debt.

14. On 19 November 2014, the Basic Court in Prishtina rendered Decision E. no. 1578/2013, which rejected as ungrounded the objection filed by the Applicant *"because he did not provide the evidence to support their allegations and any of the conditions stipulated by the law for annulment of the decision or its suspension have not been met"*.

15. Against this Decision the Applicant submitted appeal to the Court of Appeal of Kosovo.

16. On 27 February 2015, the Court of Appeal of Kosovo rendered Decision Ac. no. 4891/2014, which rejected the Applicant's appeal as ungrounded, and upheld the Decision of the Basic Court.

17. The Court of Appeal in its decision stated that: *"This court assessing the conclusion of the first instance court, namely the challenged decision which rejected the objection of the debtor, finds that such a conclusion of the court is based and is supported by the case file and legal provisions, and therefore, the challenged decision contains complete and compelling reasons"*.

18. On 30 March 2015, the Basic Court by Decision E. no. 1578/13, allowed the transfer of the enforcement procedure to a private enforcement agent.

19. On 8 April 2015, the private enforcement agent D.B. rendered the conclusion on the continuation of enforcement procedure in Case E. no. 1578/13.

Applicant's allegations

20. The Applicant alleged that BKT has unlawfully calculated interest on the principal debt, and the regular courts by allowing the execution procedure on his immovable property, also violated the law because they failed to find the BKT error.

21. The Applicant further alleged that by the transfer of the case to a private enforcement agent, the court violated Article 67 of the Law on Contested Procedure, because the private enforcement agent who will continue the execution procedure, was a senior BKT officer.

22. The Applicant requested the Court to appoint an expert to determine the exact amount of debt that the Applicant has to return to the BKT.

BKT response regarding the Applicant's Referral

23. BKT in its reply submitted to the Court, stated: *"Therefore, as described above, it is clearly seen that the debtor filed the ordinary legal remedies as legal instruments for the protection of his rights and in this way was ensured the right to fair and impartial trial, because the decision in the first instance and the decision in the second instance court were rendered by the competent authorities for implementation of law by rendering decisions based on applicable law, therefore, BKT considers that in the present case the allegations of the debtor, that his right to fair and impartial trial was violated and denied by the justice authorities of the Republic of Kosovo, do not stand!".*

Assessment of the Admissibility of the Referral

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

25. 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."*

26. The Court also takes into account 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:*
>
> > *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,*

27. In assessing the allegations filed by the Applicant, the Court notes that he challenges Decision Ac. no. 4891/14, of the Court of Appeal, by which the court decided on his appeal against the Decision of the Basic Court in Prishtina on allowing the enforcement on his immovable property.

Relevant constitutional provisions regarding the case

Article 31 [Right to Fair and Impartial Trial]

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

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

[...]

Article 54 [Judicial Protection of Rights]

"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".

28. Assessing the constitutionality of the challenged Decision in the light of the allegations of constitutional violations and facts presented by the Applicant, comparing these facts with the content of the provisions above, the Court finds no arguments of violations of the constitutional provisions. The allegations by the Applicant are based solely on *".....erroneous and incomplete determination of the factual situation, namely the incorrect calculation of legal interest..... "* are allegations of a legal violation, not a constitutional violation

29. The Court further finds that the Applicant's allegations were adequately treated by the regular courts for the issues raised, in particular the Court of Appeal, which reasoned its decision by not finding any violation in relation to the Applicant's allegations, and elaborated extensively the contractual obligations of Applicant in relation to BKT.

30. As regards the other Applicant's claim for violation of Article 31 of the Constitution, i.e., the alleged bias in the trial, because according to the Applicant's claim, the private enforcement agent, to whom the execution procedure had been transferred, was a senior BKT officer, the Applicant, at the time the contest was conducted, presented no evidence to support that claim. Furthermore, the Applicant stated that this action is contrary to Article 67 of the LCP, but did not explain how Article 31 of the Constitution was allegedly violated.

31. The Court recalls that one of the foundation principles of the constitutional review is the principle of subsidiarity. In the special context of the Constitutional Court, this implies that the duty to ensure respect for the rights provided by the Constitution pertains originally to the regular courts, and not directly or immediately to the Constitutional Court (see *Scordino vs. Italy,* no. 1, [GC], § 140).

32. In this regard, the Court notes that the Applicant had ample opportunities to present his allegations and to challenge the claims of the BKT as a responding party, therefore, the allegation that the Applicant may have been treated in a detrimental way during the court proceedings, cannot be substantiated. (See among others, Case KI71/15, Applicant *Miftar Bajrami* the Constitutional Court of Republic of Kosovo-Constitutional Review of Decision CML. no. 5/2014, of the Supreme Court of Kosovo of 23 December 2014.)

33. In these circumstances, the Court finds that the facts submitted by the Applicant do not in any way justify the allegation for violation of a constitutional right or of a right guaranteed by the ECHR; therefore, it cannot be concluded that there is a violation of human rights by the challenged decision and in accordance with Rule 36 paragraph (2) item (b) and (d), the Court finds that the Referral must be declared inadmissible on a constitutional basis as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47.2 of the Law, Rule 36 (2) (b)(d) of the Rules of Procedure, on 9 February 2016, unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately

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

KI82/14, Applicant Gani Lahu, Request for constitutional Review of Decision Rev. No. 297/2013 of the Supreme Court of the Republic of Kosovo of 18 December 2013

KI82/14, Resolution on Inadmissibility of 28 January 2016, published on 10 March 2016

Keywords: *individual referral, right to legal remedies, right to a fair trial, right to an effective remedy, manifestly ill founded.*

The Supreme Court of Kosovo, by Decision Rev. No. 297/2013 rejected the Applicant's request for revision as unfounded and adopted the legal stance and the rationale of the Court of Appeal that the Applicant's lawsuit is untimely.

The Applicant alleges that the decision of the Supreme Court has violated the rights guaranteed by Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo and Article 6 [Right to a fair trial] and Article 13 [Right to an effective remedy] of the ECHR.

The Constitutional Court found that the regular courts were not unfair manner or arbitrary in their decisions. The Court also reiterated that the Applicant does not sufficiently substantiate his claim regarding the violation of the rights and freedoms guaranteed by the Constitution. Accordingly, the Referral is declared inadmissible, as manifestly ill-founded, pursuant to Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI82/14
Applicant
Gani Lahu
Constitutional Review of Decision Rev. No. 297/2013 of the Supreme Court of the Republic of Kosovo of 18 December 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Gani Lahu represented by Mr. Adem Vokshi, a lawyer practicing in Mitrovica (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision Rev. No. 297/2013 of the Supreme Court of the Republic of Kosovo of 18 December 2013 in connection with the Decision AC. No. 190/2013 of the Court of Appeal of Kosovo of 12 July 2013. The Decision of the Supreme Court was served upon the Applicant on 19 February 2014.

Subject Matter

3. The subject matter of the referral is constitutional review of Decision Rev. No. 297/2013 of the Supreme Court of the Republic of Kosovo of 18 December 2013 in connection with the Decision AC. No. 190/2013 of the Court of Appeal of Kosovo of 12 July 2013.

4. The Applicant alleges violation of Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo in connection with Article 6 (Right to a fair trial) and Article 13 (right to an effective remedy) of the European Convention of Human Rights (hereinafter, the Convention) with regard to his dismissal from work.

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 Rule of Procedure).

Proceedings before the Constitutional Court

6. On 8 May 2014 the Applicant submitted the referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 10 June 2014 the President of the Court by Decision No. GJR. KI82/14 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI82/14 appointed the Review Panel composed of judges Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 16 June 2014 the Applicant was notified about the registration of the Referral and a copy was sent to the Supreme Court of the Republic of Kosovo.

9. On 14 September 2015 the Applicant and the Basic Court in Prishtina were asked to submit evidence of service of the last challenged judgment.

10. On 21 September 2015 the Applicant submitted his comments in relation to the service of the last challenged judgment.

11. On 28 January 2016 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 12 March 2002 the UNMIK Civil Administration notified the Applicant of his suspension from the position of General Manager of UNMIK Railways pertinent to procurement activities that were allegedly done in breach of UNMIK Regulations. In the notification letter it was stated that the duration of the applicant's suspension is pending on further investigations.

13. On August 2002 there was a job announcement for the position of General Manager of UNMIK Railways. The Applicant applied for that position in spite of suspension but another person was appointed in his stead.

14. On 22 October 2002 the Applicant was notified about termination of his employment with UNMIK Railways. The Applicant claims that in this notification letter there was no legal advice as to the legal remedies to his avail.

15. On 5 November 2002 the Applicant filed an objection against the above-stated notification requesting its annulment until the investigation is terminated or to provide him with another job position corresponding to his professional skills. The Applicant allegedly did not receive any information in this regard even though the UNMIK Railways were obliged to do so under Rule 44 of its Rules of Procedure.

16. On 18 February 2003 the Applicant filed a lawsuit against UNMIK Railways with the Municipal Court in Prishtina. The Applicant plead inter alia that he has worked for twelve years and that UNMIK Railways have unlawfully terminated his employment.

17. On 7 April 2003 the Municipal Court in Prishtina by Judgment C1. No. 39/2003 approved the lawsuit of the Applicant, annulled as illegal the notification of 22 October 2002 on termination of employment of the applicant by the UNMIK Railways, obliged UNMIK Railways to reinstate the applicant to job position corresponding to his professional skills and qualifications including – all the rights from the employment relationship – within the deadline of eight (8) days from the finality of that judgment.

18. On an unspecified date the UNMIK Railways filed an appeal with the District Court in Prishtina alleging that the judgment of the trial court was taken in breach of procedural rules, erroneous application of the substantive law, and that, it should be remanded to the trial court for fresh consideration.

19. On 24 April 2004 the District Court in Prishtina rejected as unfounded the appeal of the UNMIK Railways and upheld the impugned judgment of the trial court.

20. On an unspecified date the UNMIK Railways filed a request for revision with the Supreme Court against judgments of the trial and appeal courts respectively by alleging essential violations of the procedural law, erroneous and incomplete assessment of the factual situation and wrongful application of the substantive law.

21. On 11 November 2004 the Supreme Court by Judgment Rev. nr. 84/2004 adopted the request for revision, quashed the decision of the trial and appeal courts and remanded the case to the trial court for fresh consideration.

22. On 25 October 2005 the Municipal Court in Prishtina by Judgment C1. No. 473/04 rejected the lawsuit of the Applicant pertinent to the annulment of the notification letter – for suspension from work and reinstatement to work -in UNMIK Railways with all the rights from the employment relationship.

23. On an unspecified date the Applicant filed a complaint with the District Court in Prishtina against the above-stated decision of the trial court due to erroneous assessment of the factual situation, proposal to adopt his lawsuit as founded and to quash the impugned decision or to remand the case to the trial court for fresh consideration.

24. On 14 October 2008 the District Court in Prishtina by Decision Ac. No. 57/2006 quashed the above-sated decision of the trial court and remanded the case to the trial court for fresh consideration.

25. In the interim the UNMIK Railways was succeeded by the JSC Infrastructure Railways of Kosovo (certification for registration of the business No. 70325327 of 23 August 2011).

26. On 6 September 2012 the Municipal Court in Prishtina by Judgment C1398/08 approved the lawsuit of the Applicant as grounded, annulled the notification on termination of the Applicant's employment as unlawful, obliged the JSC Infrastructure of Railways of Kosovo to reinstate the Applicant to work in accordance with his professional skills and qualification with all the rights from the employment relationship within a deadline of seven (7) days from the day of finality of that judgment under threat of forced execution.

27. In the above stated judgment the Municipal Court in Prishtina reasoned that it is indisputable that JSC Infrastructure Railways of Kosovo is successor to the UNMIK Railways, that the applicant was employed by the then UNMIK Railways for twelve years,

that with suspension from the position of the General Manager the applicant should have been reassigned to another position corresponding to his professional skills and qualifications, that the investigation procedure about allegations of corruption against the applicant should have come to a conclusion, that the then UNMIK Railways did not corroborate the liability of the Applicant that he violated his work duties.

28. On an unspecified date the JSC Infrastructure Railways of Kosovo filed a complaint against the above-stated decision of the trial court with the Court of Appeal of Kosovo alleging essential violations of the procedural law, erroneous and incomplete assessment of the factual situation, wrongful application of the substantive law with the proposal to reject the Applicant's lawsuit and quash the impugned decision or to remand the case to the trial court for fresh consideration.

29. On 12 July 2013 the Court of Appeal of Kosovo by Decision AC. No. 190/2013 accepted the complaint of JSC Infrastructure Railways of Kosovo, quashed the above-stated decision of the trial court and dismissed the lawsuit of the Applicant as untimely.

30. In the above-stated decision the Court of Appeal of Kosovo reasoned that it cannot accept the legal stance of the trial court because it is not founded on law and is marred by essential procedural violations, that Article 83 of the Law on Basic Rights from Employment Relationship foresaw that the employee who is dissatisfied with the final decision of his employer or if the employer does not make a decision within the thirty (30) day timeline - from the day the employee has filed his objection - then the employee is entitled to request protection of his rights before the competent court, that in the concrete case we are dealing with a preclusive deadline that cannot be changed by the litigating parties nor by the court, therefore, the Applicant's lawsuit must obligatorily be dismissed as untimely because it is filed beyond the preclusive legal deadline.

31. On an unspecified date the Applicant filed a request for revision against the above-stated decision of the appeal court with the Supreme Court of Kosovo alleging essential violation of the procedural law, wrongful application of the substantive law and proposing to change the decision of the appeal court and to uphold the decision of the trial court (see paragraph 32 above).

32. On 18 December 2013 the Supreme Court by Decision Rev. No. 297/2013 rejected the Applicant's request for revision as unfounded. The Supreme Court adopted the legal stance and the rationale of the appeal court that the applicant's lawsuit is untimely.

33. The relevant part of the above-stated Decision of the Supreme Court reads:

> *"In this particular case, the claimant submitted the claim out of the time limit envisaged pursuant to the above mentioned law, because the claim was submitted at the court on 18.2.2003, whereas the respondent's notification was serviced to him on 22.10.2002.*
>
> *Pursuant to the Supreme Court's assessment, the second instance court did correctly apply the provisions of Article 83 of the LBRER, because this time limit is preclusive and after its expiration the employee forfeits the right to judicial protection. Therefore, the claim submitted after this time limit had to be rejected as out of time. In this particular case, the claimant rejected the notification on the termination of*

employment on 5.11.2002, whereas he submitted the claim at the court on 18.2.2003, in other words more than three months later".

Relevant provisions of civil disputes (labor disputes) before entry into force of the Law on Labor, No. 03/L-22 approved on 1 October 2010

Basic Labor Law in Kosovo (Official Gazette of SFRY, no. 60/89, 42/90, 42, 92 and 24/94)

"Article 83, an employee who is not satisfied with the decision of the competent authority of the organization, or if that authority fails to make a decision within 30 days from the day of filing the complaint, respectively the objection, has the right to another deadline of 15 days to seek protection of his rights before the competent court".

Applicant's allegations

34. In relation to the Judgment of the Supreme court, the Applicant inter alia alleges that: "*Upon deciding in relation to the Revision submitted against the Judgment of the Court of Appeals the Supreme Court also did not take into consideration and did not assess or respond to many of the allegations submitted in this matter, such as: "changing of the work status, lack of legal remedies, failure to conduct any disciplinary measure pursuant to the provisions of the above mentioned laws. Thus, the Applicant's fundamental rights of being equal before the law and to effectively protect his rights were violated. Moreover, the Supreme Court did not take into consideration all the evidences in the entirety of the matter pursuant to the practice of the ECtHR to provide sufficient reasons for the rejection of the submitted arguments or if its Judgments shows 'visible arbitrariness' ".*

35. In relation to the proceedings developed before his Employer, the Applicant added that: "*Grounded on the fact that the Applicant did not have the opportunity to use the effective legal remedy within his work organization due to the failure to provide the legal remedies in the respondent's decisions (notification on the termination of the employment at UNMIK Railways of date 17.10.2002) and failure to respond to the Applicant's written challenges, the Applicant was denied the opportunity to use effective remedies within the organization. Thus, the Applicant's fundamental right to effective appeal has been violated, a right guaranteed pursuant to Article 32 of the Constitution and Article 13 of the ECHR. Since the Applicant was denied the right to appeal within the employer, the judicial protection cannot be denied to the same and the courts should render merited decisions in relation to the Applicant's claim".*

36. As to the alleged inconsistencies in decision-making by the regular courts, the Applicant stated: "*Upon the changing of the adjudicating panels also changed opinions and stances pertaining to the same matter. How else can be understood the stances of the District Court (now Court of Appeals) and the Supreme Court on the same matter? If the claim would have been submitted out of the time limit, then certainly first the District Court and then the Supreme Court, when it decided the first time on 11.11.2004 would have rejected the Applicant's claim as out of time and not wait 8 long years and then render a totally opposite stance to the one from eight years ago".*

37. Furthermore, the Applicant requests the Court to: (i) to find the Referral admissible, (ii) to declare invalid Judgment Rev. No. 297/13 of the Supreme Court of Kosovo of 12

December 2013 and Decision Ac. No. 190/2013 of the Court of Appeal of Kosovo of 12 July 2013 respectively, and (ii) uphold Judgment C. No. 1398/08 of the Municipal Court in Prishtina of 6 September 2012.

Assessment of admissibility

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 Procedure.

39. 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."*

40. 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".*

41. The Court further takes into account Rule 36 (2) (d) of the Rules of Procedure which foresee:

> *"(1) The Court shall declare a referral manifestly ill-founded when it is satisfied that:*
>
> *...*
>
> *(d) the Applicant does not sufficiently substantiate his claim".*

42. As to the allegations regarding inconsistencies in decision-making of the regular courts made by the Applicant, the Court first of all notes that decisions in question relate to the period 1999-2005, meaning, that they were rendered under different circumstances and at a time when the Court had no temporal jurisdiction and are as such *ratione temporis* incompatible with the Constitution which entered into force on 15 June 2008. (See, for example, Case no. KI47/14, Applicant *Mustafë Zejnullahu,* Resolution on Inadmissibility of 11 August 2014, para.25).

43. The Court notes that the Applicant's allegation on inconsistency in decision-making of the regular courts is not a cogent one and sufficiently substantiated; but rather raises questions of interpretation and qualification of legal provisions which indeed falls in the domain of the regular courts conferred upon them by the Constitution and the law applicable in Kosovo.

44. The Court also notes that the regular courts have held that the Applicant's complaint was filed three months beyond the legal deadline which according to their interpretation precluded them to render a decision on the merits of the Applicant's case.

45. 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).

46. In this respect the Court reiterates that it is not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution. It may not itself assess 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 third or fourth instance, which would be to disregard the limits imposed on its action (See *Garcia Ruiz v. Spain* [GC], No. 30544/96, para. 28 and also see *mutatis mutandis Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, and see Case no. KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

47. 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).

48. Bearing in mind all of the foregoing, the Court considers that the Applicant does not sufficiently substantiate his claim regarding the violation of rights guaranteed by the Constitution.

49. 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 28 January 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately;

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

KI60/15, Applicant Avni Grajqevci, Constitutional Review of Judgment Pml. no. 54/2015, of the Supreme Court of Kosovo, of 16 March 2015.

KI60/15, Resolution on inadmissibility of 9 February 2016, published on 10 March 2016.

Key words: individual referral, right to fair and impartial trial, manifestly ill-founded referral.

By Decision Pml. No. 54/2015, the Supreme Court of Kosovo approved the Decision of the Basic Court and the Court of Appeal for punishing the Applicant with 6 (six) months of imprisonment.

The Applicant claimed that this Decision violates the principle *ne bis in idem*. He also alleged that his rights and freedoms guaranteed by Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo were violated.

The Court concluded that the Judgment of the Supreme Court is reasoned and it explains in entirety why it confirmed that the courts of lower instances rightfully assessed the case. Therefore, after consideration of all proceedings, the Court ascertained that the proceedings at the regular courts were not irregular and they do not contain the alleged violations. The Referral of the Applicant was declared inadmissible, as manifestly ill-founded as it is determined by Rule 36 (1) d) and (2) b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI60/15
Applicant
Avni Grajqevci
Constitutional review of Judgment Pml. no. 54/2015, of the Supreme Court of Kosovo, of 16 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
Selvete Gërxhaliu, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Avni Grajqevci (hereinafter: the Applicant) from Obiliq.

Challenged decision

2. The Applicant challenges Judgment Pml. No. 54/2015, of the Supreme Court of Kosovo, of 16 March 2015, which was served on him on 27 March 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment which, allegedly, violated the Applicant's rights and freedoms guaranteed by Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo (hereinafter: the Constitution), as well as Articles 3, 5, 6, 10, 13 and 14 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 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 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. KI60/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI60/15, appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 27 October 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. On 9 February 2016, 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 7 May 2010, the Kosovo traffic police patrol stopped the vehicle driven by the Applicant for a routine control.

10. Following a check of the Applicant's documents, a verbal conflict ensued between the Applicant and the traffic police patrol. This verbal conflict escalated into a physical altercation that resulted in injuries on both sides.

11. On 12 May 2010, the Police Inspectorate of Kosovo (hereinafter: PIK), due to allegation of excessive use of force by a member of the traffic police, initiated an internal investigation.

12. After completing the investigation, PIK recommended to the General Director of Police to impose specific measures against one of the police officers, in accordance with the Administrative Instruction No. 15/2008 on the types of major and minor disciplinary violations in the Kosovo Police.

13. On 11 May 2011, the General Director of Police rendered Decision [P. no. 222/VDP/2011], which approved the PIK proposal. The Decision states that *"due to the offence of excessive use of force, the police officer is punished by salary reduce for a certain period of time."*

14. On 14 October 2011, the Municipal Public Prosecution Office in Prishtina (hereinafter: MPPO) filed an indictment against the Applicant for the criminal offence of attacking official persons performing official duties, provided by Article 317, paragraph 2 in conjunction with paragraph 1 of the Criminal Code of Kosovo (hereinafter: the CCK).

15. On 12 December 2012, the Municipal Court in Prishtina rendered Decision [KA. no. 352/11], which rejected the indictment of MPPO with reasoning "*that the indictment does not contain sufficient evidence that support the grounded suspicion that the Applicant has committed the criminal offence which he is charged with*".

16. The MPPO filed an appeal within the legal deadline against the Decision of the Municipal Court, of 14 October 2011.

17. On 7 May 2013, the Court of Appeal of Kosovo rendered Decision [Pn. No. 184/2013] by which approved the indictment of MPPO and remanded the case to the Basic Court for retrial, with the reasoning: *„Based on the assessment of this Court, the pieces of evidence based on which the Indictment was filed in relation to this criminal offence, support the grounded suspicion that the defendant has committed the criminal offence“*.

18. On 24 February 2014, the Basic Court in Prishtina rendered Judgment [P. No. 2252/2013], by which the Applicant was found guilty of committing a criminal offense which he was accused of and punished him with suspended sentence of 6 (six) months of imprisonment. In the enacting clause is stated: *"[...] after the defendant rejected to plead guilty, the court presented the evidence, witnesses, experts' forensic reports, and in addition the court assessed the statement of the defendant when determined the punishment"*.

19. On 13 March 2014, the Applicant filed an appeal with the Court of Appeal of Kosovo, against the Judgment of the Basic Court, of 24 February 2014 due to substantial violations of the criminal procedure provisions.

20. On 11 September 2014, the Court of Appeal of Kosovo rendered Judgment [Pa1. No. 427/2014] by which rejected the Applicant's appeal as ungrounded, because "*with completely and correctly determined factual situation, the first instance court has correctly applied the criminal law when it found the Applicant guilty of the commission of the criminal offence which he is accused of. The factual situation was also determined correctly and completely and no fact remained suspicious and unclear in this procedure...*"

21. On 20 January 2015, the Applicant filed a request for protection of legality with the Supreme Court for violation of the criminal code.

22. On 16 March 2015, the Supreme Court rendered Judgment [Pml. No. 54/2015] by which the Applicant's request was rejected as ungrounded, with the statement that *„On the basis of these pieces of evidence, the first instance court has undoubtedly determined that the elements of the criminal offence for which he was found guilty exist in the actions of the convict, and this stance was also approved by the second instance court with the right reasoning, which is approved by the Supreme Court as well"*.

Applicant's allegations

23. The Applicant alleges *"The principle known as Ne bis in idem, because if someone was found guilty and punished for one offence, another person cannot be found guilty for the same offence* (in this case the Applicant)*, the factual situation was also erroneously and incompletely determined, and, therefore, all regular courts and ultimately the Supreme Court violated the rights guaranteed by the Constitution (Article 34) and the ECHR."*

24. The Applicant addresses the Court with the request: *„I request that my case be reviewed, the extraordinary remedies for protection of legality be applied, the new proceedings be*

initiated or to take what is in your jurisdiction, in order to correct irregularities and injustice in my case".

Assessment of admissibility of the Referral

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

26. In this respect, Article 113, paragraph 7 of the Constitution stipulates:

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

27. 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."

28. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of the Procedures, which provides:

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

    (4) 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. Having examined the case file, the Court found that the Applicant built his constitutional complaint on the principle of the doctrine of *Ne bis in idem*, and on the argument that the regular courts had erroneously determined the factual situation. The Applicant claimed that precisely because of non-compliance with that principle and the omissions of the regular courts, his constitutional rights and the rights and freedoms guaranteed by the ECHR were violated.

30. However, the Court finds the Applicant's argument that this is a case of *Ne bis in idem*, which is provided by Article 4 of the Criminal Procedure Code (Code no. 04/L-123), as well as by Article 34 of the Constitution, as ungrounded because the offense for which a police officer was fined by Decision [P. no. 222/VDP/2011], is not the same as the criminal offense for which the Applicant is accused of and later convicted by final Judgment of the Supreme Court, which can be seen and concluded based on the case file and on the basis of the arguments put forward by the Applicant in the Referral.

31. When it comes to the allegations of the constitutional complaint that indicate an erroneous determination of factual situation, the Court points out that it cannot replace the

assessment of the regular courts with its own assessment, because it is the role of the regular courts to assess the evidence presented before them and based on which they determine facts relevant for the application of the substantive law.

32. The Court also found as ungrounded the reference of the Applicant to the violation of the rights guaranteed by Articles 23 and 27 of the Constitution. This is not only because the constitutional complaint in this regard by itself does not contain detailed reasons, but because the Applicant has not referred to the alleged violations at any stage of the proceedings before the regular courts, and as such, the courts have not reviewed them.

33. As to the Applicant's allegation of violation of Article 24 of the Constitution, the Court also finds it ungrounded, because in order to establish discrimination, it is not sufficient that the Applicant generally refers that he is unequally treated, and by doing so he does not indicate the basis for this inequality.

34. In this respect, the Court further refers to the case law of the European Court of Human Rights which provides that "*discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*" (Judgment: *Willis v. the United Kingdom*, no. 36042/97, paragraph 48, ECHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, paragraph 63, *D.H. and others v. Czech Republic*, paragraph 44)."

35. The Applicant also alleges that the Judgment of the Supreme Court violates his rights under Article 49 of the Constitution.

36. The Court finds that the decision of the Supreme Court which is challenged by the Applicant does not in any way prevent him from working and exercising profession, or in any other way, directly or indirectly restricts his rights under Article 49 of the Constitution. Therefore the Court is of the opinion that the Applicant's allegations of the alleged violation are also ungrounded (see, *mutatis mutandis,* Resolution on Inadmissibility No. RK734/14 in the case KI09/14 of 24 November 2014, paragraph 29).

37. As to the allegation filed by the Applicant of violation of Article 6 of the ECHR, the Court reiterates that the right to a fair trial is assessed on the basis of the proceedings as a whole (The European Court of Human Rights, *Barbera, Messeque and Jabardo v. Spain,* Judgment of 6 December 1988, number 146, paragraph 68).

38. The right to a fair trial also obliges the courts to present the reasons for the decision, which allow the parties to use effective available legal remedies, which the Applicant did in all stages of the criminal proceedings. The absence in one stage of the proceedings may be challenged and corrected in the second, the next stage.

39. The Applicant's allegations of violations of Article 54 of the Constitution, in the Court's opinion do not stand, because he never filed a claim of a violation of his constitutional rights before the regular courts.

40. The Court notes that the Applicant's dissatisfaction with the outcome of the case cannot in itself constitute an arguable claim of a violation of the Constitution and the ECHR (see case *Mezotur-Tiszazugi Tarsulat against Hungary*, no. 5503/02, ECtHR, Judgment of 26 July 2005).

41. The Court further reiterates that it is not its duty under the Constitution to act as a court of fourth instance in respect of decisions taken by the regular courts. The role of the regular courts is to interpret and apply the relevant rules of both, the 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*, the Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

42. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, given that in the Referral was not proven that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.

43. Accordingly, 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, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 9 February 2016, 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 paragraph 4 of the Law; and

IV. This Decision effective immediately.

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

KI109/15, Applicant Milazim Nrecaj, Request for Constitutional Review of Decision No. 171, of the Ministry of Labour and Social Welfare of the Government of Kosovo, of 9 June 2011.

KI109/15, Resolution on inadmissibility approved on 9 February 2016 and published on 17 March 2016.

Key words*: individual referral, judicial protection of human rights, non-exhaustion of legal remedies, principle of subsidiarity.*

The subject matter of the this Referral is the constitutional review of the decision, which according to the Applicant's allegations, deprives him the right which he is entitled to under the Law on the status and rights of martyrs, invalids, veterans, members of the Kosovo Liberation Army, civilian victims of war and their families.

The Applicant challenges Decision of the Ministry of Labour and Social Welfare of the Government of Kosovo which prevents the realization of his rights.

The Court notes that the Applicant has not pursued any legal remedies against the challenged Decision of the Ministry. The Court reiterates that it is the responsibility of the Applicant to exhaust all legal remedies before submitting the request for constitutional review of an act of a public authority to the Constitutional Court.
The Court considers that in this case there is no final decision of the competent authority, which in this stage would be a subject of review by the Constitutional Court. The request was declared inadmissible due to non-exhaustion of legal remedies.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI109/15
Applicant
Milazim Nrecaj
Request for constitutional review of Decision No. 171, of the Ministry of Labour and Social Welfare of the Government of Kosovo, of 09 June 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Milazim Nrecaj from village of Sallagrazhda, Municipality of Suhareka (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision No. 171 of the Ministry of Labour and Social Welfare of the Government of Kosovo (hereinafter: Ministry of MLSW), of 9 June 2011.

Subject Matter

3. The subject matter of the Referral KI109/15 is the constitutional review of the decision, which according to the Applicant's allegations, deprives him the right which he is entitled to under the Law no. 04/L-054 on the status and rights of martyrs, invalids, veterans, members of the Kosovo Liberation Army, civilian victims of war and their families (hereinafter: the Law on the Status and Rights).

Legal Basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of 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 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 14 September 2015, the President of the Court by Decision GJR. KI109/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI109/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 25 September 2015, the Court notified the Applicant and Ministry of MLSW of the registration of Referral.

8. The Court also requested the Applicant to supplement the Referral with necessary information and to submit the decision, which he challenges.

9. On 09 October 2015, the Applicant only partly responded to the request of the Court, of 25 September 2015; namely he submitted to the Court only Decision No. 171 which he challenges.

10. On 9 February 2016, 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 19 February 2013, the Applicant and his mother jointly filed a request with the municipal administration in Suhareka, requesting the Municipality to issue a certificate that the deceased Rr. N. (the Applicant's father) was a victim of the war of 1999.

12. On the same date, the Department of Administration and Inspection of the Municipality of Suhareka rendered a Decision confirming that Rr. N. was a victim of the war. Additionally, the Decision allowed for the late registration of the deceased Rr. N. in the respective book of the deceased.

13. On an unspecified date in 2013, the Applicant filed a request to the Ministry of MLSW requesting the recognition of his rights under the Law on Status and Rights. He based his claim on the fact that his father was a victim of the war.

14. The Ministry of MLSW refused to receive his request. The Ministry communicated to the Applicant that it cannot accept his request, because of the Decision No. 171 of the Minister of MLSW dated 09 June 2011. This Decision states, *inter alia,* that:

    a. *The number of applicants for pensions and benefits under the Law on war values is closed as of 31 May 2011.*
    b. *Until the adoption of a new political decision by the Minister, the MLSW will not accept any new requests for realization of pensions provided by the Law on the war values, as well as not accept any requests for the recognition of any related rights.*
    c. *Whereas for the applications, which have been accepted up to 31 May 2011, the MLSW should find legal solution, in coordination with senior management.*

Applicant's Allegations

15. In the Referral, the Applicant alleges as follows: *"I have the certificate from the Department of Health and Social Welfare of the Municipality of Suhareka as required by Article 3, paragraph 10.1 of the Law on the status and rights of martyrs, invalids, civilian victims and their families No. 04/L-054 {...} and in accordance with this, I seek the rights which belong to me."*

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

> *"I wish to confirm that my mother and I jointly benefit the right which belongs to us according to the law and not to make an injustice to us for 16 years. The Department of Social Welfare, by political decision of the Minister N. R., has neglected us and I ask the highest state authority to give us back the right to my mother, to me and to the whole family in this difficult financial situation."*

Assessment of the Admissibility of the Referral

17. In order that the Court adjudicates the Applicant's Referral, it shall examine whether the Applicant has fulfilled 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:

> *"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 notes that the Applicant claims that he has not benefitted from the right to a pension in accordance with the Law on Status and Rights. The Applicant states that *"this is a direct consequence of Decision No. 171 of the Minister of MLSW to block all requests for such pensions which are submitted after 31 May 2011."*

20. Although this Decision relates, in general, to all requests for pensions under the Law on Status and Rights, the Court notes that the Applicant's rights are affected by this decision, therefore is an authorized party within the meaning of Article 113.7 of the Constitution.

21. Further, 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".*

22. Furthermore, Rule 36 (1) (b) of the Rules of Procedure provides:

> *"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. The Court notes that the Applicant in his Referral challenges only Decision No. 171 of the Ministry of MLSW. The Applicant claims that this Decision prevents him from exercising his rights.

24. The Court notes that the Applicant has not pursued any legal remedies against either the Decision No. 171 of 09 June 2011 of the Minister of MLSW, which he claims violated his rights to a pension, or against the refusal of the Ministry of MLSW to receive his request for a pension.

25. The Court considers that the Applicant had legal remedies at his disposal, such as those which are regulated by Article 10 of Law No. 03/L-202 on Administrative Confli

Article 10:
"Based on the Law, a natural and a legal person has the right to start an administrative conflict, if he/she considers that by the final administrative act in administrative procedure, his/her rights or legal interests has been violated."

26. Therefore, the Court reiterates that it is the responsibility of the Applicant to exhaust all legal remedies before submitting the request for constitutional review of an act of a public authority to the Constitutional Court.

27. The Court recalls that the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, administrative or court proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (See Decision in case KI07/09, the Applicants. *Demë Kurbogaj and Besnik Kurbogaj*, constitutional review of Judgment Pkl. No. 61/07, of 24 November 2008, paragraph 8).

28. The rationale for the exhaustion rule is to afford the courts, the opportunity to prevent or to address 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 case Kl41/09, Applicant *AAB-RIINVEST University L.L.C., Prishtina v. Government of the Republic of Kosovo*, KI41/09 of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, No. 25803/94, ECHR, Decision of 28 July 1999).

29. In sum, the Court considers that in this case there is no final decision of the competent authority, which in this stage would be a subject of review by the Constitutional Court, because the Applicant has not exhausted all available legal remedies, in accordance with Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to 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 9 February 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Bekim Sejdiu Arta Rama-Hajrizi

KI108/15, Applicant Sylejman Meta, Constitutional Review of Decision Ac. no. 1328/2015, of the Court of Appeal of Kosovo, of 27 April 2015.

KI108/15, Resolution on inadmissibility, of 9 February 2016, published on 17 March 2016.

Key words: individual referral, request for interim measure, right to fair and impartial trial, protection of property, manifestly ill-founded.

On an unspecified date, N.N.T. "Eko" from Gjakova sent the Applicant an invoice (no. 09/10) related to a debt for the works performed in the premises "Agrollapi" in Fushë-Kosovë, thereby setting a deadline of seven (7) days for it to be paid.

On 30 October 2014 the private enforcement agent by Order (P. no. 503/14) approved N.N.T. "Eko"'s proposal for enforcement and reasoned that the Applicant did not pay the debt deriving from the abovementioned invoice. The Applicant filed an objection with the Basic Court in Gjakova against the private enforcement agent's Order (P. no. 503/14) allowing the enforcement, emphasizing that the invoice was not signed and stamped by the Applicant.

The Court ascertained that all the arguments of the applicant which were important for the resolution of the contest, were heard in correct way and that the courts considered them in correct way that the material and legal reasons for the Decision which was challenged by the Applicant, have been presented in details and that based on all foregoing, the procedures at the regular courts, taking into consideration their entirety, were correct. The Referral has been declared inadmissible, as manifestly ill-founded because the applicant did not present the *prima facie* case for the admissibility of the Referral.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI108/15
Applicant
Sylejman Meta
Constitutional review of Decision Ac. no. 1328/2015 of the Court of Appeals of Kosovo, of 27 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Sylejman Meta, the owner of legal entity N.P.M. „Metaj“, with its main office in Drenas (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision (Ac. no. 1328/2015) of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) of 27 April 2015, which was served on the Applicant on 19 May 2015.

Subject Matter

3. The subject matter is the constitutional review of the abovementioned Decision of the Court of Appeals, which allegedly violated Applicant's rights guaranteed by Article 24 [Equality Before the Law], 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) and Article 6.1 of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

4. The Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, halting the execution of the Judgment (Ac. no. 1328/2015) of the Court of Appeals.

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

Rule 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 17 August 2015 the Applicant submitted the Referral to the Court.

7. On 14 September 2015 the President of the Court by Decision no. GJR. KI108/15 appointed Judge Ivan Čukalović, as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI108/15 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 1 October 2015 the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Court of Appeals.

9. On 27 October 2015 the Applicant submitted to the Court a request for an interim measure.

10. On 23 November 2015 the Court informed the Ministry of Trade and Industry, Kosovo Investment and Enterprise Support Agency in a capacity of a party to the procedure, of the registration of the Referral and the request for an interim measure filed by the Applicant.

11. On 25 November 2015 the Ministry of Trade and Industry submitted some documents to the Court.

12. On 9 February 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral and rejection of the request to impose an interim measure.

Summary of facts

13. On an unspecified date, N.N.T. "Eko" from Gjakova sent the Applicant an invoice (no. 09/10) related to a debt for the works performed in the premises "Agrollapi" in Fushë-Kosovë, thereby setting a deadline of seven (7) days for it to be paid.

14. On an unspecified date, N.N.T. "Eko" filed with a private enforcement agent a proposal for allowing the enforcement against the Applicant, due to expiry of the deadline for payment of the debt deriving from the abovementioned invoice.

15. On 30 October 2014 the private enforcement agent by Order (P. no. 503/14) approved N.N.T. "Eko"'s proposal for enforcement and reasoned that the Applicant did not pay the debt deriving from the abovementioned invoice.

16. On 15 December 2014 the Applicant filed an objection with the Basic Court in Gjakova against the private enforcement agent's Order (P. no. 503/14) allowing the enforcement, emphasizing that the invoice (No. 09/10) – an authentic document - was not signed and stamped by the Applicant and it was not based on any legal transaction.

17. On 24 March 2015 the Basic Court in Gjakova by Decision (PPP. No. 24/15) rejected as ungrounded the Applicant's objection.

18. In its Decision, the Basic Court in Gjakova reasoned that,

> *"[...] Regarding the claim that the bill is falsified, it did not attach any reliable evidence that would make this allegations of the objection credible.*
>
> *In response to the objection, the creditor (N.N.T. "Eko") emphasized that the debtor's (Applicant's) claim that the bill is false is not grounded because the bill no. 09/10 of 09.10.2014 is registered as such in page three of book of sales of N.N.T. "Eko" for 2014, which shows the supplies and VAT as well as the reporting document at the Tax Administration of Kosovo for the tax period 10/2014 [...]*

19. On 2 May 2015 the Applicant filed an appeal with the Court of Appeals against Decision (PPP. No. 24/15) of the Basic Court due to essential violations of the enforcement procedure provisions.

20. On 27 April 2015 the Court of Appeals by Decision (Ac. no. 1328/2015) rejected the Applicant's appeal as ungrounded and upheld Decision (PPP. No. 24/15) of the Basic Court.

21. In its decision, the Court of Appeals reasoned that *"[...] this conclusion of the court is grounded and is based on the legal provisions and the case file. In the meantime, justifiable reasons have been provided which are accepted by this court as well [...]"*.

Applicant's allegations

22. The Applicant alleges that the Decision (Ac. no. 1328/2015) of the Court of Appeals has violated the guaranteed rights, as referred to in paragraph 3 of this document.

23. The Applicant requests the Court *"[...] to find the violation of the rights pursuant to Chapter II of the Constitution while proceeding the case before the Court of Appeal of the Republic of Kosovo with Decision Ac. no. 1328/2015 of 27.04.2015 [...]"*.

24. The Applicant in his request for an interim measure alleges that

> *"[...]*
>
> *Unrecoverable damage and Violation of Public Interest*
>
> *Now that I am writing this Proposal for Interim Measure, the second stage of the enforcement proceedings has already started, namely, the execution proceedings, and the assessment and marking of items that will be sold has begun, with a purpose to realize the loan of the creditor, in this case the private enforcement agent Gj. R. aims that on behalf of "debt" of the creditor to sell the public property where the debtor is as a tenant, namely, in his request the private enforcement agent Gj. R. informs the Ministry of Trade and Industry that the plot no.27113, at the place called "Krivova" CZ Korretica e Epërme, with surface area of 0.61. 17 ha, is under the ownership of the Municipality of Drenas, with rent of 99 years by N.P.M. "Metaj", will serve as assets for execution of the creditor's claim [...]"*.

Admissibility of the Referral

25. The Court first examines 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.

26. The Court refers to Article 113.7 of the Constitution, which stipulates:

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

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 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;*
> *[...]*
> *(d) the Applicant does not sufficiently substantiate his claim".*

29. As it was stated above, the Applicant alleges that the Decision (Ac. no. 1328/2015) of the Court of Appeals has violated his rights guaranteed by Article 24 [Equality Before the Law]; Article 31 [Right to Fair and Impartial Trial], and Article 46 [Protection of Property] of the Constitution and Article 6.1 of the ECHR.

30. The Court notes that the Applicant repeats the same allegations he raised also in the proceedings upon the appeal before the Court of Appeals, which by Decision (Ac. no. 1328/2015) of 27 April 2015 gave a reasoned response to all Applicant's allegations regarding the reasons of the application of the respective rules of the procedural and substantive law.

31. In this respect, the Court also notes that the Court of Appeals reasoned its Decision with regard to Applicant's allegations, stating that *"[...] they do not fall under the reasons stipulated pursuant to Article 71 of the LEP, and which if they would exist would hinder the permitted enforcement, especially when considering that pertaining to the objection's claims the Applicant did not provide any written evidence which would support his claims, as stipulated by Article 69, paragraph 4 of the LEP. Pursuant to the specified provision it is provided that the objection's evidence should be submitted in writing, or the objection shall be rejected. [...]".*

32. The Court also notes that the Court of Appeals rejected the Applicant's appeal as ungrounded, and endorsed, in its entirety, the reasoning of the Basic Court in Gjakova.

33. Furthermore, the Court notes that the Court of Appeals considered each Applicant's allegation, explaining in detailed manner why the Applicant's appeal had to be rejected as ungrounded, and the Decision of the lower instance court be upheld.

34. The Court, based on the case file, considers that the Decision of the Court of Appeals has not violated the rights guaranteed by the Constitution and the ECHR, as alleged by the Applicant.

35. Regarding other allegations pertaining to the factual situation and the interpretation of the provisions of law, the Court emphasizes that it is not its task to deal with errors of fact or errors of law (legality) allegedly committed by courts or the public authorities, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).

36. The Court further 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 of other public authorities is 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, ECHR Judgment of 21 January 1999).

37. 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 and, *mutatis mutandis*, *Shub v. Lithuania,* No. 17064/06, ECHR Decision of 30 June 2009).

38. The Court further considers that in the proceedings before the regular courts, including those before the Court of Appeals were fair and reasoned (See: *mutatis mutandis*, *Shub v. Lithuania,* No. 17064/06, ECHR Decision of 30 June 2009).

39. The Court notes that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECHR, Decision of 31 May 2005) and has not specified how the referred articles of the Constitution support its claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

40. In sum, the Court concludes that the Applicant's allegations of violation of his rights and freedoms are unsubstantiated and ungrounded, therefore, his Referral is to be declared inadmissible as manifestly ill-founded.

41. Therefore, in accordance with Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, the Referral is to be declared as manifestly ill-founded.

The request for an interim measure

42. As stated above, the Applicant also requests the Court to halt the execution of the Decision (Ac. no. 1328/2015) of the Court of Appeals for the reasons under paragraph 22 of this document.

43. 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."*

44. As emphasized above, the Applicant's Referral is inadmissible. For this reason, there is no *prima facie* case for the imposition of an interim measure. Therefore, the request for an interim measure is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (1) (d) and (2) (b) (d) and 55 (4) of the Rules of Procedure, on 9 February 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for an interim measure;

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**
Ivan Čukalović	Arta Rama-Hajrizi

KI102/15 and KI115/15, Applicants Ilmi Gashi and Naser Raçi, Constitutional Review of Judgments of the Supreme Court Rev. No. 76/2015, dated 2 April 2015 and Rev. No 89/2015, dated 15 April 2015.

KI102/15 and KI115/15, Resolution on inadmissibility of 22 December 2015, published on 17 March 2016

Key words: individual referral, right to work and exercise profession, invalidity pension, manifestly ill-founded.

Both Applicants filed the request with the Pension Fund of the Kosovo Energy Corporation (hereinafter: the employer) for recognizing the right to invalidity pension. The employer approved the requests of the Applicants for invalidity pension. The payment of the pension for the Applicants was defined by the above mentioned Decisions which will last for a period of 5 (five) years.

After the period of 5 years ended, the Applicants filed a claim against the employer by asking from the employer to continue the payment of invalidity pensions.
The Applicants alleged that the challenged Judgments of the Supreme Court of Kosovo "*violate their right to work guaranteed by the Constitution of the Republic of Kosovo*". The Applicants allege that "*in cases where the disabled pensioner is rehabilitated they have the right of returning to work".*

The Court considers that the Applicants did not clarify why and how their rights to work guaranteed by Article 49 of the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. The Court ascertained that all the arguments of the Applicants which were important for the resolution of the contest have been heard in correct way and that the courts considered in correct way that the material and legal reasons for the Decision that they objected, have been presented in details and that based on all foregoing, the procedures at the regular courts, taking into consideration their entirety, were rightful. The Referral has been declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Joined Cases No.
KI102/15 and KI115/15
Applicants
Ilmi Gashi and Naser Raçi
Constitutional review of Judgments of the Supreme Court
Rev. No. 76/2015 dated 2 April 2015 and Rev. No 89/2015 dated 15 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

Applicants

1. The Referral KI102/15 was submitted by Mr. Ilmi Gashi while Referral KI115/15 was submitted by Mr. Naser Raçi (hereinafter: the Applicants).

Challenged decision

A. As to Referral KI102/15

2. The Applicant challenges the Judgments of the Supreme Court Rev. No. 76/2015 of 2 April 2015 2015.

B. As to Referral KI115/15

3. The Applicant challenges the Judgments of the Supreme Court Rev. No 89/2015 of 15 April 2015 served to the Applicant on 2 June 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Decisions which allegedly *"denies the right to Article 49 of the Constitution"*.

Legal basis

5. The Referrals are 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 28 July 2015 the Applicant Ilmi Gashi submitted the Referral to the Court.

7. On 9 September 2015 the Applicant Naser Raçi submitted the Referral to the Court.

8. On 19 August 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 Arta Rama-Hajrizi.

9. On 1 October 2015 the Court sent a copy of the Referral KI102/15 to the Supreme Court.

10. On 20 October 2015 the Court sent a copy of the Referral KI115/15 to the Supreme Court.

11. On 25 November 2015 the President of the Court, ordered the joinder of the Referral KI115/15 to the Referral KI102/15. By this order, it was decided that the Judge Rapporteur and composition of the Review Panel be the same as it was decided by Decision No. KSH. KI102/15.

12. On 26 November 2015 the Court notified the Applicants and the Supreme Court of the joinder of the Referrals.

13. On 22 December 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

A. As to Referral KI102/15

14. On an unspecified date in 2005 the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicant's request for pension under category "A" (Decisions no. 45) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.

15. The abovementioned decisions determined that the payment of the pension for the Applicant will be for a fixed period of five (5) *years (1 April 2005 and end on 1 May 2010),* while the amount of monthly pension shall be 105 Euros. Furthermore, the decision stated that the unsatisfied party may file an appeal with the Committee for Reconsideration of Disputes.

16. According the submitted documents, no appeal was filed against this decision by the Applicant.

17. As specified in the agreement, KEK terminated the payment of the pension of the Applicant after end date.

18. On an unspecified date the Applicant submitted a claim before the Basic Court in Prishtina.

19. On 13 May 2013 the Basic Court in Prishtina (Judgment C. no. 1021/2010) rejected as ungrounded the claims submitted by the Applicant. The Basic Court found that *"KEK has fulfilled compensation as specified in the agreement and that no appeal was filed when the agreement was signed"*.

20. The Applicant submitted an appeal to the Court of Appeal in Prishtina against the judgment of the Basic Court.

21. On 26 February 2014 the Court of Appeal (Judgment AC. no. 3925/2013) rejected as ungrounded the appeal and upheld the judgment of the Basic Court holding that:

> *"Since in the agreement concluded between the Claimant and the Respondent, in the Article of this agreement was foreseen that this agreement shall start from 01.04.2005 and will end after the payment of 60 months, which ends on 01.05.2010, this payment was foreseen by Article 2.1, item a) of the agreement, namely the Disability and Deceased Pension Fund Statute of the Kosovo Energy Corporation, on 01.11.2002. By this, it results that the Respondent fulfilled its obligation based on the abovementioned agreement, namely Decision no. 45, of 24.03.2005, in which decision was exactly determined the date when the payment of the pension starts on 01.04.2005 and ends on 01.05.2010, it was also exactly determined when it will be interrupted to the beneficiary of this pension, at the abovementioned date. The amount of the pension was determined at the amount of 105 Euros. The party dissatisfied could have filed an appeal against this decision but the Claimant did not use such a right. Therefore, the first instance court has correctly rejected the statement of claim of the Claimant as ungrounded".*

22. The Applicant submitted a request for revision to the Supreme Court of Kosovo.

23. On 2 April 2015 the Supreme Court (Judgment Rev. no. 76/2015) rejected as ungrounded the Applicant's request for revision.

24. The Supreme Court stated:

> *"The Supreme Court of Kosovo, approved the reasoning of the judgment of the lower instance courts as fair, since the Claimant, by himself, has applied for the pension, which request was approved based on the UNMIK Regulation 2001/35 and the Pension Fund Statute of the KEK, and based on these facts the Respondent notified the Claimant by Decision no. 45, of 24.03.2005, about the concrete conditions of the pension. By the abovementioned decision of the Respondent, it was determined that the payment of the pension starts on 01.04.2005 and ends on 01.05.2010, at the monthly amount of 105 €. The Claimant could have filed an appeal against this decision with the Committee for dispute review through the administration of the Pension Fund, but he did not file any appeal and received the pension until 01.05.2010. This court considers that the Claimant agreed to transform his employment relationship into another legal relationship, while the statements of the Revision that in the meantime the Claimant became able to work but his reinstatement to the job position was not accepted and the payment was not continued. The Supreme Court reviewed it but it did not have any impact to decide differently, since in the decision of the Respondent was mentioned that (this decision replaces all up to now acts signed between KEK and the user). This court considers that the Respondent has fulfilled its obligation to the Claimant, since it acted in conformity with the abovementioned decision, which was not challenged by the Claimant. Article 11.1, item (b) of the Essential Labor Law in Kosovo provides that the labor contract shall terminate by a written agreement between the employee and the employer".*

B. As to Referral KI115/15

25. On an unspecified date in 2004 the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicant's request for pension under category "A" (Decisions no.140) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.

26. The abovementioned decisions determined that the payment of the pension for the Applicant will be for a fixed period of five (5) *years (1 July 2004 until 1 August 2009),* while the amount of monthly pension shall be 105 Euros. Furthermore, the decision stated that the unsatisfied party may file an appeal with the Committee for Reconsideration of Disputes.

27. According the submitted documents, no appeal was filed against this decision by the Applicant.

28. As specified in the agreement, KEK terminated the payment of the pension of the Applicant after end date.

29. On an unspecified date the Applicant submitted a claim before the Basic Court in Prishtina.

30. On 27 February 2012 the Basic Court in Prishtina (Judgment C. no. 1333/2011) rejected as ungrounded the claims submitted by the Applicant. The Basic Court found that *"KEK has fulfilled compensation as specified in the agreement and that no appeal was filed when the agreement was signed"*.

31. The Applicant submitted an appeal to the Court of Appeal in Prishtina against the judgments of the Basic Court.

32. On 11 November 2014 the Court of Appeal (Judgment AC. no. 5267/2012) rejected as ungrounded the appeal and upheld the judgment of the Basic Court holding that:

> *"The first instance court correctly assessed that the claimant entered into early retirement as a disabled category 3, at his request, who had been allowed by decision of the respondent no. 140/53 of 13.07.2004, based on UNMIK Regulation no. 2001/35 and the Statute of Pension Fund of the respondent, the provided payment of pension paid in monthly amount of 105.00 euro for five years, starting from 01.07.2004 and ended on 01.08.2009. This decision had a legal remedy and the dissatisfied party may file an appeal against it, which the claimant never did, which means that he agreed with the abovementioned decision in all its parts, and as far as the time of retirement and the amount of the pension , this decision became final and was implemented in details by the respondent, which has fulfilled its obligation to pay the claimant for a period of 5 years, therefore, the first instance court found that the claimant lacks a legal basis for the approval of his statement of claim, with which agrees this court too, as the second instance court".*

33. The Applicant submitted a request for revision to the Supreme Court of Kosovo.

34. On 15 April 2015 (Rev. no. 89/2015) the Supreme Court rejected as ungrounded the Applicant's request for revision.

35. The Supreme Court stated:

> *"The subject matter in the revision were the allegations of the revision that the lower instance courts did not treat the claimant's matter equally with the cases of other parties, although with regard to the same factual and legal situation there is a judgment of the Constitutional Court also for 26 former employees of the respondent, whose request was approved. The Supreme Court finds that these allegations of the revision are not grounded, due to the fact that the Judgment of the Constitutional Court, in which the claimant was referred in the revision, does not refer to the constitutional matter which the claimant initiated before the court, but the latter has to do with a situation where relationship between the respondent and a number of workers is regulated by a special agreement, according to which the respondent was obliged to pay this monthly payment of 105 euro until the establishment of the Pension Fund of Kosovo, whereas in the present case the relationship between the claimant and the respondent is regulated by a decision of the respondent, which was rendered based on the claimant's application for early retirement and by the same decision was approved the claimant's application for early retirement for a definite time period of 5 years and the respondent under this decision fulfilled its obligation to pay the abovementioned pension. By the same decision it was not provided the continuation of these payments after the expiry of 5 years, as it is specified in the abovementioned decision. The claimant was aware of the duration of the pension, specified in the decision, however, he accepted these conditions of the payment of this pension and he did not appeal the decision. For these reasons, the Supreme Court approves in entirety as grounded, the legal stance of the first instance courts, according to which the respondent without any decision, agreement, a regulations, or any internal legal act, or without any legal basis respectively, is not obliged to continue to pay the claimant the payment of early pension as long as he does not turn 65, which is provided by law".*

Applicants' allegations

36. The Applicants claims that the challenged Judgments of the Supreme Court of Kosovo *"violates their right to work guaranteed by the Constitution of the Republic of Kosovo".*

37. The Applicants allege that *"they were informed that in cases where the disabled pensioner is rehabilitated they have the right of returning to work".*

38. In addition, the Applicants requests from the Constitutional Court *to "annul the Judgments of the lower Courts and order that the Applicants be returned to work".*

Admissibility of the Referral

39. First of all, the Court examines whether the Applicants have fulfilled the admissibility requirements.

40. 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.*

41. The Court also takes into account Rule 36 (2) d) of the Rules of Procedure, which foresees:

> *(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;*

42. In this respect, the Court notes that the Applicants have not substantiate a claim on constitutional grounds and have not provided evidence proving that their fundamental rights and freedoms have been violated by the regular courts.

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

44. The Court notes that the Supreme Court sufficiently reasoned its Judgments and thus the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis, Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

45. The Court recalls that in the other KEK cases referred to by the Applicants (e.g. KI40/09) it was adjudicated regarding the Temporary Compensation for the Termination of Employment by KEK. However, the Court notes that the current Referrals KI102/15 and KI115/15 differ from the afore-mentioned cases (e.g. KI40/09). In fact, in these cases, KEK and former employees signed an agreement on temporary compensation until the establishment of the Kosovo Invalidity Pension Fund, thus with a reference to a uncertain date; while, in the current cases KI102/15 and KI115/15, KEK and former employees signed an agreement on temporary compensation for a five years term, thus with a reference to a certain date.

46. The Court considers that the Applicants did not clarify why and how their rights to work guaranteed by Article 49 of the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. The Court emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

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

48. Therefore, pursuant to Rule 36. (2).d) of the Rules of Procedure, the Referrals are manifestly ill-founded and thus are inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (2) d) of the Rules of Procedure and Rule 56 (2) of the Rules of Procedure, on 22 December 2015, unanimously

DECIDES

I. TO REJECT 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;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Arta Rama-Hajrizi

KI97/15, Applicant Veli Kuçi, Constitutional Review of Judgment Rev. no. 137/2015, of the Supreme Court of Kosovo, of 5 May 2015

KI97/15, Resolution on inadmissibility of 26 January 2016, published on 17 March 2016.

Key words*: individual referral, right to fair and impartial trial, right to liberty and security, equality before law, manifestly ill-founded referral.*

Supreme Court of Kosovo issued Judgment Rev. no. 137/2015, of 5 May 2015, whereby the revision of the Applicant against Judgment Ac. nr. 632/2013, of the Court of Appeal, of 28 October 2014, was rejected as ungrounded.

The essence of challenged decisions was about the request of the Applicant for compensation of the damage for the unpaid pensions.
Among others, the Applicant alleged that the Supreme Court violated the right to fair and impartial trial, equality before law and the right to liberty and security.
The Court found that the applicant did not support and prove sufficiently his claim. The Referral was declared inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI97/15
Applicant
Veli Kuçi
Constitutional review of Judgment Rev. no. 137/2015, of the Supreme Court of Kosovo, of 5 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Veli Kuçi (hereinafter: the Applicant), residing in village Shiroka, the Municipality of Suhareka.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 137/2015, of the Supreme Court of Kosovo, of 5 May 2015, which rejected as ungrounded the Applicant's revision against Judgment Ac. no. 632/2013, of the Court of Appeal, of 28 October 2014, regarding his request for compensation of damage in the name of unpaid pensions.

3. The challenged judgment was served on the Applicant on 10 July 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely Article 24 [Equality Before the Law] Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial].

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 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 15 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 19 August 2015, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 28 September 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 26 January 2016, 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. Since 1973, the Applicant established employment relationship with the Provincial Secretariat for Internal Affairs (hereinafter: PSIA), of the Socialist Autonomous Province of Kosovo.

11. The Applicant worked at several positions within the PSIA as an authorized officer. While performing his official duties with PSIA on 1 April 1981 the Applicant was wounded during the street protests (demonstrations).

12. On 25 September 1989, by Decision No. 05-580-366/86, based on the then applicable law, the Applicant's right to early retirement pension was recognized.

13. On 5 July 2010, the Applicant addressed the Ministry of Labor and Social Welfare (hereinafter: MLSW), with a request for "*reactivation of the old age and disability pension",* which he enjoyed until 1998.

14. On 19 July 2010, the MLSW rejected the request with reasoning that this is a problem of all pensioners in Kosovo, who were retired from the fund of the former Yugoslav Federation. The MLSW further stated that the right to an old age pension is realized with the age of 65.

15. On 10 August 2010, the Applicant filed lawsuit with the Municipal Court in Prishtina in the contested procedure against MLSW, requesting to oblige the MLSW to pay the compensation for material damage, namely the unpaid pensions since 1998 and the reactivation of old age and disability pension.

16. On 15 October 2012, the Municipal Court in Prishtina, (Judgment C. no. 1774/1000), rejected the statement of claim as ungrounded.

17. The reasoning of the decision further reads: "*... the passive legitimacy is lacking on the side of the respondent, considering that the passive legitimacy of the respondent is related to the material – legal relation, therefore, it decided to reject the statement of claim of the claimant as ungrounded*".

18. On 19 January 2013, the Applicant addressed the Court of Appeal against the Judgment mentioned in paragraph 14, claiming that it was rendered with "*serious violations of the law and the objective situation was not presented*".

19. On 28 October 2014, the Court of Appeal of Kosovo (Judgment Ac. No. 632/13), rejected the Applicant's appeal as ungrounded. In the reasoning of the decision, the Court of Appeal emphasized that the challenged decision is entirely correct and lawful, and that the MLSW is not a successor of the then Pension Fund and, therefore, lacks passive legitimacy in this legal matter.

20. On 28 December 2014, the Applicant filed a request for revision with the Supreme Court claiming that the judgment referred to in paragraph 17, was rendered with violation of the legal procedure provisions, erroneous determination of factual situation and erroneous application of the substantive law.

21. On 5 May 2015, the Supreme Court (Judgment Rev. no. 137/2015) rejected as ungrounded the Applicant's revision.

22. The Supreme Court stated: *"the second instance court, on the basis of a fair and complete determination of the factual situation, has correctly applied the provisions of the contested procedure, of which this Court acts ex-officio... The second instance court in its Judgment has provided sufficient reasons for the relevant facts for a fair trial of this legal matter, which this Court acknowledges as well...".*

23. For the sake of complete presentation of procedures and facts, the Court notes that on 11 May 2011, the Applicant had filed a Referral KI63/11 with the Court. The Applicant challenged Judgment A. no. 1239/2011 of the Supreme Court of Kosovo, of 23 March 2010 in an administrative conflict, which rejected the right to reactivation of disability pension. On 11 July 2011, the Court, by Resolution on Inadmissibility KI63/11, rejected his Referral in accordance with Rule 36 (2) (b) as manifestly ill-founded. In the present case, the previous Applicant's Referral with the Court, does not fall within the scope of the subject matter of this Referral, because the Applicant now specifically challenges other decisions of the regular courts, rendered in the contested procedure.

Applicant's allegations

24. The Applicant alleges that the Judgment of the Supreme Court violated Article 24 [Equality Before the Law], Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution.

25. The Applicant requests the Court:

> *"We kindly ask the Constitutional Court for the annulment of the Decision by which I have been injured...".*

Admissibility of Referral

26. The Court notes that in order to be able to adjudicate the Applicant's Referral, it 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.

27. In that respect, the Court refers to Article 113 of the Constitution, which establishes:

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

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

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

29. The Court also refers to Rule 36 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.*

30. The Applicant alleges that the challenged Judgment has violated his rights guaranteed by Article 24 [Equality Before the Law], Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution.

31. The Applicant alleges that his rights were violated because of erroneous determination of facts. However, he does not substantiate his claim of erroneous determination of facts, which has resulted in a violation of his constitutional rights.

32. The Court observes that the Applicant is not satisfied with legal qualification of the facts and the law applied by the regular courts. The legal qualification of facts and applicable law are matters which fall under the domain of legality.

33. In this respect, the Court considers that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings before the regular courts, cannot of itself raise an arguable claim for breach of the Constitution (see *mutatis mutandis* case *Mezotur-Tiszazugi Vízgazdálkodási Tarsulat vs. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such violations of the Constitution, the Applicant must present convincing and compelling argument (Shih Case KI198/13, Applicant *Privatization Agency of Kosovo*, Constitutional Court, Resolution on Inadmissibility, of 13 March 2014).

34. Moreover, the Applicant did not explain how and why the conclusion of the Supreme Court violates his right to equality before the law, right to liberty and security and the right to fair and impartial trial.

35. The Court further considers that the Supreme Court reasoned in a detailed manner why the Applicant's statement of claim was rejected. In particular, the Supreme Court concluded that the MLSW cannot be a party in the proceedings in this legal matter due to lack of passive legitimacy. In the challenged Judgment, the Supreme Court states: "*The respondent is not legal successor, namely the inheritor of this authority and due to this it lacks passive legitimacy in this legal matter*".

36. The Court further considers that the proceedings before the Basic Court in Prishtina, the Court of Appeal and the Supreme Court were not unfair or arbitrary (see case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

37. The Court reiterates that it 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).

38. For the reasons above, the Court concludes that the Applicant did not sufficiently substantiate and prove his allegation.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, on 25 January 2016, 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**
Bekim Sejdiu	Arta Rama-Hajrizi

KI54/15, Applicant Melihate Nura from Prishtina who requests Constitutional Review of Judgment ARJ. No. 31/2014, of the Supreme Court, of 14 January 2015

KI54/15, Resolution on inadmissibility, of 28 January 2016, published on 17 March 2016.

Key words: individual referral, Constitutional Review of Judgment of the Supreme Court, manifestly ill-founded

The Applicant filed the referral pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, Rule 56 of the Rules of Procedure of the Constitutional Court of Kosovo.

The Supreme Court [Decision ARJ. no. 31/2014] rejected the Applicant's request for extraordinary review of the Judgment of the Court of Appeal [AA. no. 59/2014] and Judgment [A. no. 607/2008] of the Supreme Court as invalid because it was filed out of the time limit provided by the law.

The Court notes that the Applicant complains on the fact that on the appeal against the Judgment of the Supreme Court decided the Court of Appeal, therefore, based on this, her right guaranteed by Article 102.3 [General Principles of the Judicial System] has been violated. In this regard, the Court notes that the Court of Appeal also explained in detail the question of jurisdiction in this case, by citing the Law on Courts No. 03/L 199, based on which the Court of Appeal had the jurisdiction to decide on the present legal matter, therefore, the Court of Appeal reasoned its decisions and substantiated each allegation of the Applicant regarding the rejection of her appeal.

The Court also ascertained that the Supreme Court rejected the request of the Applicant for extraordinary review of Judgment as inadmissible because it was filed out of the time limit provided by law.

Therefore, the Court notes that the Applicant did not substantiate her allegation on constitutional grounds and did not provide evidence indicating how and why her rights and freedoms, protected by the Constitution, were violated by the challenged decision. The Court concludes that the Applicant's Referral is 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. KI54/15
Applicant
Melihate Nura
Constitutional review of Judgment ARJ. no. 31/2014, of the Supreme Court, of 14 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mrs. Melihate Nura from Prishtina, who before the Constitutional Court is represented by her daughter Mrs. Afërdita Nura-Lama (hereinafter: the Applicant).

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court [ARJ. no. 31/2014] of 14 January 2015. This Judgment was served on the Applicant on 13 February 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 102.3 [General Principles of the Judicial System].

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 29 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 GJR. KI54/15 appointed Judge Robert Carolan as Judge Rapporteur and by Decision KSH. KI54/15 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Bekim Sejdiu.

7. On 1 July 2015, by Decision GJR. KI54/15, the President of the Court appointed Judge Arta Rama-Hajrizi as member of the Review Panel replacing Judge Kadri Kryeziu, whose mandate with the Constitutional Court ended on 26 June 2015.

8. On 20 July 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 28 January 2016, 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. On 7 November 2007, the Municipality of Prishtina rendered Decision [05 no. 350-23648] which rejected the Applicant's request for granting the urban- technical agreement for the renovation of the damaged residential building.

11. The Applicant filed an appeal with the second instance authority of the Municipality of Prishtina.

12. On 22 February 2008, the second instance authority of the Municipality of Prishtina rendered decision [01 no. 350-23648] which rejected the appeal of the Applicant as ungrounded.

13. Against the abovementioned decisions of the Municipality of Prishtina, the Applicant filed the appeal with the Administrative Matters Panel of the Supreme Court of Kosovo, as a competent court for the resolution of disputes pursuant to the Law on Courts applicable at that time.

14. On 31 October 2012, the Panel for Administrative Matters of the Supreme Court of Kosovo [Judgment A. no. 607/2008] rejected the Applicant's appeal as ungrounded.

15. Against the first instance Judgment [A. no. 607/2008] of the Supreme Court, the Applicant filed appeal with the second instance of the Administrative Matters Panel of the Supreme Court, as a competent court for the resolution of disputes pursuant to the Law on Courts applicable at that time.

16. Bearing in mind the entry into force of the new Law on Courts, the General Matter Department of the Court of Appeal decided on the Applicant's appeal. As regards the jurisdiction of the court in this case, the Court of Appeal found the following:

> *"The Court of Appeals has jurisdiction in this legal matter based on Article 39 of the Law No.03/L-199, on Courts, whereby it was provided that, "All cases which, on 31 December 2012, are second instance cases of the Supreme Court, District Court or High Court for Minor Offences and have not been concluded with final decisions, shall on 1 January 2013, be treated as cases of the Court of Appeals."*

17. On 24 July 2014, the of the General Matter Department of the Court of Appeal rejected [Judgment AA. no. 59/2014] the Applicant's appeal as ungrounded and upheld the Judgment [A. no. 607/2008] of the Supreme Court.

18. On 14 January 2014, the Applicant filed request for reconsideration of extraordinary review of the Judgment of the Court of Appeal and of the Supreme Court.

19. On 14 January 2015, the Supreme Court [Decision ARJ. no. 31/2014] rejected the Applicant's request for reconsideration of extraordinary review of the Judgment of the Court of Appeal [AA. no. 59/2014] and Judgment [A. no. 607/2008] of the Supreme Court as invalid because it was filed out of the time limit provided by the law.

Relevant legal provisions concerning the Law on Courts

LAW ON COURTS NO. 03 L-199

Article 39
Completion of pending cases

1. All cases which, on 31 December 2012, are second instance cases of the Supreme Court, District Court or High Court for Minor Offences and have not been concluded with final decisions, shall on 1 January 2013, be treated as cases of the Court of Appeals.

2. All cases which, on 31 December 2012, are first instance cases of the Supreme Court, District Court, District Commercial Court, Municipal Court or the Municipal Courts for Minor Offences and have not been concluded with final decisions, shall on 1 January 2013, be treated as cases of the Basic Court which has the appropriate territorial jurisdiction.

This Law shall enter into force on January 1, 2011.

Applicant's allegations

20. The Applicant alleges that:

> *"the lower instance court, the Court of Appeal in the present case, cannot decide on the complaint filed against Judgment of the Supreme Court, namely the higher instance court".*

21. The Applicant further alleges that:

> *"in the present case, only the Supreme Court of Kosovo is competent to decide regarding the complaint filed against Judgment A. No. 607/2008, of the Supreme Court of Kosovo, of 31 October 2012."*

22. The Applicant requests the Court :

"In the second instance, the Supreme Court of Kosovo, as the court having jurisdiction on this matter, shall decide on this case, or, in the best case, when both of the abovementioned judgments - the one of the Court of Appeals and the one of the Supreme Court, are annulled, the Court having jurisdiction should render a decision pursuant to the law."

Admissibility of the Referral

23. 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.

24. In this respect, 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."

25. The Court mentions also 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."

26. The Court further takes into account Rule 36 (2) (b) of the Rules of Procedures, 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".

27. The Court notes that the Applicant complains on the fact that on the appeal against the Judgment of the Supreme Court decided the Court of Appeal, therefore, based on this, her right guaranteed by Article 102.3 [General Principles of the Judicial System] has been violated.

28. In this regard, the Court notes that the Court of Appeal also explained in detail the question of jurisdiction in this case, by citing the Law on Courts No. 03/L-199, based on which the Court of Appeal had a jurisdiction to decide on the present legal matter, therefore, the Court of Appeal reasoned its decisions and substantiated each allegation of the Applicant regarding the rejection of her appeal.

29. The Court also notes that the Supreme Court rejected the Applicant's request for extraordinary review of the Judgment as inadmissible, because it was filed as out of the time limit provided by the law.

30. The Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the Supreme Court. It is the role of regular courts to interpret and apply pertinent rules of 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 *Edwards v. United Kingdom*, No. 13071/87, the Report of the European Commission of Human Rights of 10 July 1991).

31. In the present case, the Court does not find that the proceedings before the Supreme Court and the Court of Appeal were in any way unfair or arbitrary (see *mutatis mutandis Shub vs. Lithuania*, ECHR, Decission on admissibility of application, no. 17064/06, of 30 June 2009).

32. Therefore, the Court notes that the Applicant did not substantiate her allegation on constitutional grounds and did not provide evidence indicating how and why her rights and freedoms, protected by the Constitution, were violated by the challenged decision.

33. The Court concludes that the Applicant’s Referral is manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 28 January 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Arta Rama-Hajrizi

KI120/15, Applicant Retki Bytyqi, Request for Constitutional Review of Judgment AC-I-14-0220-A001- A0013, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 21 May 2015

KI120/15, Resolution of inadmissibility of 10 February 2016, published on 22 March 2016.

Key words*: individual request, right to fair and impartial trial, manifestly ill-founded referral.*

Supreme Court of Kosovo, by Judgment AC-I-14-0220-A001-A0013, of the Appellate Panel of the Special Chamber, rejected the request of the Applicant for inclusion in the list of eligible employees who acquire the right to 20 percent from privatisation of Social Enterprise "Industria Ushqimore" by the Privatization Agency of Kosovo.

The Applicant alleged that the Decision violated the right to fair and impartial trial guaranteed by Article 31 of the Constitution. Based on this, he requests the annulment of the Judgment of the Specialized Panel of the Special Chamber and the Judgment of the Appellate Panel of the Special Chamber as anti-constitutional and unlawful.

The Constitutional Court ascertained that the Decision of the Panel of the Special Chamber of Supreme Court is fair and reasoned. Further on, the Court based on Applicant's allegations notes that there is no evidence which present violation of rights guaranteed by Constitution and ECHR. Therefore, the Court concludes that the Referral is manifestly ill-founded and as such is declared inadmissible, as defined by Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI120/15
Applicant
Refki Bytyqi
Request for constitutional review of Judgment AC-I-14-0220-A001-A0013 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 21 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Refki Bytyqi from village Randobrava, Municipality (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment AC-I-14-0220-A001-A0013 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of the Special Chamber) of 21 May 2015, which was served on him on 8 June 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Appellate Panel of the Special Chamber, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of 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 06 October 2015 the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 November 2015 the President of the Court by Decision no. GJR. KI120/15 appointed Judge Ivan Čukalović as a Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI120/15 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 23 November 2015 the Court notified the Applicant and the Appellate Panel of the registration of the Referral.

8. On 10 February 2016 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

Summary of facts

9. The Applicant was an employee of the Socially Owned Enterprise "Industria Ushqimore" (hereinafter: the SOE) until 1998, where due to injury in his working place went to the disability pension.

10. On 2 August 2011, the SOE was privatized.

11. On 3 May 2012 Privatization Agency of Kosovo (hereinafter: the Privatization Agency) published the final list of employees who were entitled to a share of the revenues collected from the privatization of the SOE, in which the Applicant was not included.

12. On 25 May 2012, the Applicant filed an appeal with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) against the final list of the Privatization Agency.

13. On 22 June 2012, the Privatization Agency responded on the Applicant's appeal, stating that *"he does not meet requirements for exercising rights in accordance with Article 10.4 of UNMIK Regulation 2003/13, therefore, proposes to the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of the Special Chamber), to reject the Applicant's appeal as inadmissible. "*

14. On 16 May 2014, the Specialized Panel of the Special Chamber rendered Judgment [C-U-120018], rejecting the Applicant's appeal as ungrounded, with the reasoning that: *„Based on the attached documents submitted by the Applicant and the Privatization Agency, it may be concluded that the Applicant has been in disability pension since 1998, and based on this he could not meet the requirement provided by Article 10.4 of UNMIK Regulation 2003/13"*.

15. On 25 July 2014, the Applicant filed an appeal with the Appellate Panel of the Special Chamber against Judgment of the Specialized Panel of the Special Chamber [C-U-120018].

16. In the appeal, the Applicant stated that the Specialized Panel of the Special Chamber has erroneously determined the factual situation and erroneously applied the substantive law, and that the Judgment is contradictory and confusing.

17. On 21 May 2015, the Appellate Panel of the Special Chamber rendered Judgment [AC-I-14-0220-A001-A0013] which rejected the Applicant's appeal as inadmissible, with a reasoning: *„The Specialized Panel of the Special Chamber correctly decided when rejected the Applicant's appeal as ungrounded, because he failed to meet the requirements provided by Article 10.4 of UNMIK Regulation no. 2003/13"*.

Applicant's allegations

18. The Applicant stated in the Referral that *„the Judgment of the Appellate Panel of the Special Chamber violated the rights to equality of trial, guaranteed by Article 31 the Constitution)."*

19. The Applicant is addressing the Court with the request: *"to annul the Judgment of the Specialized Panel of the Special Chamber and Judgment of the Appellate Panel of the Special Chamber as anti-constitutional and unlawful and to oblige the Privatization Agency to include him in the final list of employees entitled to 20% of privatization."*

Assessment of admissibility of the Referral

20. In order to adjudicate the Applicant's complaint, the Court first needs to examine whether the complaint meets the 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. In addition, Article 48 of the Law prescribes:

    "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) b) of the Rules of Procedure which provides:

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

    (6) 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".

24. In analyzing the Applicant's allegations in terms of violation of the rights and freedoms guaranteed by the Constitution, the Court notes that the Applicant built his constitutional complaint on allegations of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, which in its content corresponds to Article 6 of the European Convention on Human Rights (hereinafter: ECHR)

25. In the present case, the Court finds that Specialized Panel of the Special Chamber, and later the Appellate Panel of the Special Chamber, have based their judgments on the provisions of Article 10.4 of UNMIK Regulation 2003/13, which reads:

> *"For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the SOE 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.*

26. Therefore, the Court notes that the regular courts found that the Applicant failed to meet the procedural requirements provided by the law, and, therefore, he could not be included in the list of eligible employees who have acquired the right to 20 (twenty) percent from privatization.

27. As to the Applicant's allegations of a breach of Article 31 of the Constitution, the Court recalls that the principle of a fair and impartial trial requires that courts refer to certain legal norm, while the legal basis of the judgment should not be arbitrary, i.e. outside the concrete case, and in the Court's opinion, the regular courts have followed this during the regular procedure.

28. Moreover, the Court considers that the Appellate Panel of the Special Chamber gave clear and accurate conclusions in Judgment [CI-14-0220-A001-A0013], based on the interpretation that is acceptable under the Constitution and on the application of the relevant law based on the factual situation which was determined in the court proceedings.

29. The Court considers that the Applicant has not substantiated his claims nor has he submitted any *prima facie* evidence indicating a violation of his rights guaranteed by the Constitution and 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 CA. no. 2129/2013 of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013 of the Court of Appeal of Kosovo, of 5 December 2013).

30. In sum, the Court considers that in the conducted proceedings, there are no facts or circumstances that would in any way indicate that in the proceedings that preceded the proceedings before the Court, the Applicant's human rights or freedoms guaranteed by the Constitution or the ECHR were violated. Therefore, the Court finds that the reference to a violation of Article 31 Constitution is ungrounded.

31. 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, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in its session held on 10 February 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**
Ivan Čukalović	Arta Rama-Hajrizi

KI89/15, Applicant Fatmir Koci, Request for constitutional review of Judgment PAKR. No. 473/2014 of the Court of Appeal of Kosovo

KI89/15, Resolution on Inadmissibility of 28 January 2016, published on 22 March 2016

Keywords: *individual referral, equality before the law, right to fair and impartial trial, legality and proportionality in criminal cases, manifestly ill-founded.*

The Court of Appeal of Kosovo by Judgment PAKR. No. 473/2014 rejected the complaint of the Applicant as unfounded and upheld the Judgment of the Basic Court, which found the Applicant guilty of criminal offence of accepting bribes.

The Applicant alleged that the decision of the Court of appeal violated the rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 33 [The Principle of Legality and Proportionality in Criminal Cases], 54 [Judicial Protection of Rights] of the Constitution of Kosovo, Article 6 (1) and 3 (d) of the ECHR and Article 7 the UDHR.

The Constitutional Court found that the Applicant did not show and substantiate by concrete facts that the challenged decision violated his human rights and freedoms guaranteed by the Constitution, the ECHR or the UDHR because the facts presented by him do not show in any way the alleged violations. The Applicant's Referral was declared inadmissible, as manifestly ill-founded in accordance with Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case KI89/15
Applicant
Fatmir Koci
Constitutional review of
Judgment PAKR. No. 473/2014 of the Court of Appeal of Kosovo
of 21 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Fatmir Koci from Prizren (hereinafter, the Applicant) represented by Mrs. Flutra Hoxha, a lawyer practicing in Prishtina.

Challenged decisions

2. The Applicant challenges Judgment PAKR. No. 473/2014 of the Court of Appeal of Kosovo of 21 November 2014 in connection with Judgment P. No. 353/13 of the Basic Court in Prizren of 11 July 2014.

3. The challenged judgment was served upon the Applicant on 23 February 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment PAKR. No. 473/20143 of the Court of Appeal of Kosovo of 21 November 2014.

5. The Applicant alleges violation of Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 33[The Principle of Legality and Proportionality in Criminal Cases], 54 [Judicial protection of Rights] of the Constitution in connection with Article 6 (1) and 3 (d) of the European Convention on Human Rights (hereinafter, the Convention) and Article 7 of the Universal Declaration of Human Rights (hereinafter, the UDHR).

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/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

7. On 23 June 2015 the Applicant via Post Office filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. 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), Bekim Sejdiu and Arta Rama-Hajrizi.

9. On 17 September 2015 the Court notified the Applicant about the registration of the Referral and asked him to submit evidence of the date of service of the challenged judgment as well as pleadings presented during the course of regular proceedings. On the same day a copy of the Referral was sent to the Basic Court in Prizren and the Court of Appeal of Kosovo respectively.

10. On 28 September 2015 the Applicant in addition to submitting new documents also informed the Court that he has revoked the power of attorney of Mrs. Myrvete Çollaku and has authorized Mrs. Flutra Hoxha to represent him before the Court.

11. On 28 January 2016 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 an unspecified date the Applicant as an official person-electrician of the Kosovo Energy Distribution and Supply Company (hereinafter, KEDS) has asked from a private individual X an amount of €500 in order not to send the electricity meter for testing to KEDS office in Prishtina. The Applicant and X had agreed to meet in a certain restaurant in Prizren in order to conclude the afore-mentioned “agreement”.

13. In the interim X contacted the Kosovo Police and told them about his discussion with the Applicant. The Kosovo Police gave €500 to X in order to offer them to the Applicant.

14. On 2 August 2013 the Applicant and X met in a certain restaurant in Prizren wherein the Applicant accepted €500 from X. The Applicant was subsequently stopped by the Kosovo Police which found the stated amount of money in his bag.

15. On 3 August 2013 the Basic Prosecution in Gjakova requested detention and decision on initiation of investigations against the Applicant on the grounds of criminal offences of abuse of official position or authority and accepting bribes as envisaged by Articles 422 and 428 of the Criminal Code of the Republic of Kosovo (hereinafter, the CCRK).

16. On 3 August 2013, the Basic Court in Gjakova by Decision PPr. KR. 73/13 approved the request of the Public Prosecutor and ordered one month detention against the Applicant.

17. On 22 October 2013 the Prosecutor filed indictment PP. No. 155/13 against the Applicant before the Basic Court in Prizren - due to criminal offence of accepting bribes - under Article 428 para.2 of CCRK. The Prosecutor had stated, inter alia, that it is beyond doubt that the Applicant was an official of "KEDS" and that he accepted €500 from X.

18. The Applicant pleaded before the Basic Court, inter alia, that his actions were not unlawful because X has declared that he is not injured, that he took the money from X to pay the electricity debt and not as bribe, and that it has not been proved that he has committed the stated criminal offence.

19. On 11 July 2014 the Basic Court in Prizren by Judgment P.no.353/13 found the Applicant guilty by holding:

> *"IS GUILTY that on 02.08.2013 at 13,10 hrs in Prizren, in capacity of the official person-electrician for measurement of meters in KEDS in Prizren, directly asks for benefit for himself in order that as the official for measurement of meters to act in contradiction with his official duty (that derive from his employment contract no. 12105/0 of 01.01.2013), not to send the electrical meter for calibration in Prishtina, which was previously taken from the house of the injured several days before so that from the injured Arsim Sadiku during their meeting in the restaurant at the market Super Viva receives the amount of €500 in banknotes 10x50 €, by putting them on his bag and at the moment of getting out of the restaurant he was stopped by the unit of economic crimes and with preliminary control with him was found money, which the latter received and which was later confiscated.*
>
> *Thus he committed criminal offence of receiving a bribe under Article 428 para. 2 of CCK.*
>
> *SENTENCED To a fine in the amount of 1000 (one thousand) euro, and the imprisonment sentence of 3 (three) years and 3 (three) months, in which punishment will be calculated the time spent in the house arrest from 03.08.2013 until 21.10.2013".*

20. The Basic Court, inter alia, reasoned that it had made its findings based on the statements of the injured X, that the Applicant in his official capacity as an official person - electrician of KEDS directly - asked for profit - from X, that the Applicant accepted €500 from X and was subsequently stopped by the Kosovo Police.

21. On an unspecified date the Applicant filed a complaint with the Court of Appeal of Kosovo alleging, inter alia, that the Basic Court made essential violations of the criminal procedure and erroneous and incomplete assessment of the factual situation. The Applicant mainly complained that Kosovo Police set him up to accept the money from X, that X has admitted that he made an error of fact and of law, and that, the imprisonment sentence and the fine are severe when taking into account the Applicant's family situation.

22. On 21 November 2014 the Court of Appeal of Kosovo by Judgment PAKR. No. 473/2014 rejected the complaint of the Applicant as unfounded and upheld the judgment of the Basic Court.

23. The relevant part of the judgment of the Court of Appeal reads:

"With the assessments of these evidence and facts, this court finds that the allegations in the appeal regarding the factual situation cannot be accepted as such. First of all the injured himself reported the case to the police, then his testimony given to the police and to the prosecution office corresponds with the testimonies of the police officers, and other material evidence, such as the recorded CD, listing of calls/inbox and outbox messages, therefore the allegation that the testimony of witness in the court hearing is real, that the injured was in mistake of fact and that the case was completely invented, is completely excluded. What statement will be approved by the court is not connected nor limited by special formal rules. In principle is supported that statement that is substantiated by other evidence. Therefore this court finds that the conclusion of the first instance court that in the actions of the defendant exist elements of the criminal offence under Article 428 para. 2 of CPCK, for which he was accused and found guilty, is fair. According to the legal definition of the abovementioned provision, this criminal offence exists when the official person in a direct or indirect way requests or receives a gift or any benefit, in order that the official person acts or doesn't act in contradiction with his official duty. These kinds of actions of the commission of this criminal offence are taken by the official person to act in contradiction with his official duty, thus we deal with unacceptable, unlawful action of the official person. On the other hand, since it was determined that the defendant requested and received money from the injured in order to not send the electrical meter to the Calibration Center, this court notes that in his actions are met the elements of the criminal offence of accepting bribes under Article 428 para.2 of CPCK, as he took money to act contrary to his official duty, thus taking unlawful action. The fact that the court did not calculate the time spent in the detention on remand in the imposed sentence is grounded, however in the present case we deal only with a technical error, as it follows from the case file and the challenged judgment, the time spent in the house arrest of the defendant was counted from the day of imposing the detention on remand. The defendant was in detention on remand from 03.08.2013 until 02.09.2013, whereas in the imposed sentence the court counted the time spent in the house arrest from 03.8.2013 until 21.10.2013. For these reasons, this court found as ungrounded the appealed allegations regarding the violation of the criminal law".

The Law

The relevant part of the Criminal Code of the Republic of Kosovo reads as follows:

Article 428
Accepting bribes

1. An official person who requests or receives, directly or indirectly, any undue gift or advantage, for himself, herself or for another person, or who accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting in accordance with his or her official duties, shall be punished by fine and imprisonment of six (6) months to five (5) years.

2. An official person who requests or receives, directly or indirectly, any undue gift or advantage, for himself or herself or for another person, or accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting, in violation of his or her official duties, shall be punished by fine and imprisonment of three (3) to twelve (12) years.

> *3. When the offense under paragraph 1 of this Article results in a benefit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by fine and imprisonment of one (1) to eight (8) years.*

Applicant's allegations

24. The Applicant alleges violation of Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 33[The Principle of Legality and Proportionality in Criminal Cases], 54 [Judicial protection of Rights] of the Constitution in connection with Article 6 (1) and 3 (d) of the European Convention on Human Rights (hereinafter, the Convention) and Article 7 of the Universal Declaration of Human Rights (hereinafter, the UDHR).

25. The Applicant alleges that: "*he was trapped and that his case was a set-up by the Kosovo Police because he had accepted the money in order to pay the debt and not as bribe, and that, X happened to be a friend of the investigating police officer*".

26. The Applicant alleges that the Court of Appeal – in the main hearing - did not take into account that X has declared that he has given the money to pay the debt and not as bribe, that X has publicly asked the Applicant to forgive him, and that, X did not claim for damage compensation from the Applicant.

27. The Applicant alleges that regular courts have violated the principle of equality of arms because neither he nor his lawyer were notified when the Prosecutor examined X, the regular courts did not assess his statements but only those of the Prosecutor and the Kosovo Police, and moreover, the regular courts did not properly establish the fact that he was not an official person but rather an electrician rendering services for his employer.

28. The Applicant claims that his term of imprisonment is too high and not proportional to the indictment because in similar cases the regular courts have rendered less severe sentences.

29. Finally the Applicant asks the Court: (i) to declare his referral admissible, (ii) to find violation of Articles 21, 24, 31, 33, 54 of the Constitution, Article 7 of the UDHR and Article 6 of the Convention and (iii) establish any right or responsibility for the parties in this referral which this honored Court deems as legally grounded and reasonable.

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) (b) of the Rules of Procedure which specify:

(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"

34. As to the allegation of entrapment by the Kosovo Police, the Court considers that a question of importance is whether the Kosovo Police can be deemed to have "joined" or "infiltrated" the criminal activity rather than to have initiated it. In the concrete case, although the Kosovo Police had influenced the course of events, notably by giving banknotes to the private individual X, their actions must be treated as having "joined" the criminal activity rather than as having initiating it as the initiative in the case had been taken by the private individual X. The latter had complained to the Kosovo Police that the Applicant would require a bribe to reach a favorable outcome in his case, and only after this complaint was the Kosovo Police prompted into action. (See the Case of *Miliniene v. Lithuania*, Application no. 74355/01, ECtHR, Judgment of 24 June 2008).

35. As to the allegation of the Applicant for not being notified when X was examined by the Prosecutor, the Court notes that there is nothing in the referral that suggest that this question was raised by the Applicant during the course of regular proceedings. This question is being raised for the first time before the Constitutional Court. However, the Constitutional Court – in accordance with the principle of subsidiarity – cannot assess this question without it having been raised and assessed in the regular proceedings beforehand.

36. As to the allegations concerning the assessment of evidence namely what evidence should be given more weight and precedence, the demeanor of witness X *post factum* and the severity of the sentence are all questions of fact and law which fall under the purview of the regular courts. In fact, under our Constitution, it is the duty and prerogative of the regular courts to establish questions of fact and of law. Moreover, the Court notes that there is nothing in the present referral which would suggest that the evidence was taken unlawfully or in breach of constitutional provisions.

37. Finally, the Court considers that the Applicant only enumerates and generally describes the content of constitutional provisions without substantiating exactly how those provisions were violated in his case as is required by Article 48 of the Law.

38. 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).

39. 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).

40. 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).

41. 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).

42. In these circumstances, the Court considers that the Applicant has not substantiated his allegations of a violation of his fundamental human rights guaranteed by the Constitution, the Convention or the UDHR 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.

43. 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 28 January 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama-Hajrizi

KI74/15, Applicant Ekrem Jakupi, Request for constitutional review of Judgment Rev. no. 300/2014 of the Supreme Court of Kosovo

KI74/15, Resolution on Inadmissibility of 28 January 2016, published on 22 March 2016

Keywords: *individual referral, human dignity, right to fair and impartial trial, right to compensation of damage,*

The Supreme Court of Kosovo, by Judgment Rev. no. 300/2014 rejected as ungrounded the Applicant's request for revision of the Judgment of the Court of Appeal, which rejected the request for compensation of damage of the Applicant.
The Applicant alleges that the decision of the regular courts, upheld as fair by the Supreme Court, violated the rights and freedoms guaranteed by Articles 23 [Human Dignity] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo.

The Court considered that the Applicant only enumerated the constitutional provisions without substantiating exactly how those provisions were violated as required by Article 48 of the Law. Thus, there are no *prima facie* facts or evidence on which he bases his allegations. Therefore, the Referral is manifestly ill-founded and is declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI74/15
Applicant
Ekrem Jakupi
Constitutional review of Judgment Rev. no. 300/2014 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 Cukalovic, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Ekrem Jakupi from Prishtina (hereinafter, the Applicant) represented by Mr. Ekrem Agushi, a lawyer practicing in Prishtina.

Challenged decisions

2. The Applicant challenges Judgment Rev. No. 300/2014 of the Supreme Court of Kosovo of 8 December 2014 in connection with Judgment Ac. no. 3945/2012 of the Court of Appeal of Kosovo of 14 February 2014 and Judgment C1. No. 302/07 of the Municipal Court in Prishtina of 1 March 2012.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment Rev. No. 300/2014 of the Supreme Court of Kosovo of 8 December 2014 which was served upon the Applicant on 10 February 2015.

4. The Applicant alleges violation of Article 23 [Human Dignity] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) with regard to non-pecuniary compensation due to unlawful dismissal from work.

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 June 2015 the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 3 August 2015 the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of judges Altay Suroy (presiding), Snezhana Botusharova and Bekim Sejdiu.

8. On 17 September 2015 the Court notified the Applicant about the registration of the Referral and asked him to submit evidence of the date of service of the challenged judgment. On the same day a copy of the Referral was sent to the Basic Court in Prishtina and the Supreme Court of Kosovo.

9. On 28 September 2015 the Applicant submitted evidence of the date of service of the last challenged judgment.

10. On 28 January 2016 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 20 October 2004 the Applicant was dismissed from work by his employer, ProCredit Bank in Prishtina.

12. On an unspecified date the Applicant filed a complaint with the then Municipal Court in Prishtina against ProCredit Bank pertinent to his dismissal from work.

13. On 22 March 2011 the Municipal Court in Prishtina, by Judgment C. no. 2142/09, annulled, as unlawful, the decision of ProCredit Bank terminating Applicant's employment relationship. On 4 May 2011 the Applicant was then reinstated to his work place.

14. On an unspecified date the Applicant filed a lawsuit with the Municipal Court in Prishtina against ProCredit Bank thereby claiming compensation for the alleged damages he suffered as a result of his unlawful dismissal from work for lost profits and non-pecuniary damages caused by psychological suffering and mental anguish related to his dismissal from work.

15. On 1 March 2012 the Municipal Court in Prishtina, by Judgment C1. No. 302/07, partially approved the Applicant's statement of claim by obliging ProCredit Bank to pay to the Applicant compensation for the pecuniary damage of lost profits for his unpaid salary, but rejected as ungrounded the Applicant's claim for compensation for non-pecuniary damage due to psychological suffering and mental anguish related to his dismissal from work. The trial court reasoned, *inter alia*, that: (i) Article 200 of the Law on Obligational Relations (hereinafter, the LOR) does not provide that pecuniary compensation shall be awarded for the suffered psychological pain – mental anguish experienced due to dismissal from work and (ii) the Applicant's statement of claim on this point is time-barred because it is filed beyond the statutory limitation for him to make such a claim.

16. On 26 March 2012 the Applicant filed an appeal with the then District Court in Prishtina against the judgment of the trial court thereby alleging essential violations of the

procedural law, erroneous and incomplete assessment of factual situation and erroneous application of substantive law. The Applicant mainly alleged that the trial court did not take into account opinions of the medical experts about his psychological suffering and mental anguish related to his dismissal from work.

17. On 1 January 2013 the Law No. 03/L-199 on Courts entered into force. Pursuant to Article 17. 1. 2 of that Law: *"The Court of Appeals is established as the second instance court with territorial jurisdiction throughout the Republic of Kosovo. The seat of the Court of Appeals shall be in Prishtina"*.

18. On 14 February 2014 the Court of Appeal of Kosovo by Judgment Ac. no. 3945/2012 rejected the complaint of the Applicant as ungrounded and upheld the judgment of the trial court. The appellate court accepted the factual and legal assessment made by the trial court and adopted its reasoning by holding that Article 200 of the LOR did not provide that pecuniary compensation shall be awarded for the suffered psychological pain – mental anguish experienced due to dismissal from work.

19. On 11 November 2014 the Applicant filed a request for revision with the Supreme Court of Kosovo alleging erroneous application of substantive law by the courts of lower instance. The Applicant mainly alleged that lower courts made an erroneous application of substantive law when they held that Article 200 of the LOR does not provide that pecuniary compensation shall be awarded for the suffered psychological pain – mental anguish experienced due to dismissal from work.

20. On 8 December 2014 the Supreme Court of Kosovo, by Judgment Rev. no. 300/2014 rejected as ungrounded the Applicant's request for revision of the judgment of the court of appeal.

21. The relevant part of the judgment of the Supreme Court reads:

> *"Based on the assessment of this Court the impugned judgment does not contain deficiencies which would enable one to challenge its legality as to the applicability of the substantive law…due to the fact that this type of injury in a labor dispute was not provided for by Article 200 of the LOR which was in force at the material time. The first paragraph of that Article expressly stipulates and enumerates – one by one – persons that are entitled to pecuniary compensation…that article provided for pecuniary compensation due to the hurt feelings in cases when the injured party are relatives of the deceased person, the person's injury to his body integrity, or when the person has suffered severe disability due to injury. This leads to conclusion that claims for non-pecuniary damage can be adjudicated only if the injury is manifested in one of the above-described ways… which based on the just assessment of the court of second instance is untenable. Given the fact that on the basis of law or case law, the right to non-pecuniary injury compensation due to the unlawful termination of the employment relationship, has not been accepted under the conditions set out by the law"*.

Applicant's allegations

22. The Applicant alleges that the regular courts in their decisions in his case violated Articles 23 [Human Dignity] and 31 [Right to Fair and Impartial Trial] of the Constitution.

23. The Applicant alleges that: *"the regular courts have erroneously applied Article 200 of the former - LOR which was applicable until 20 December 2012 when the LOR of the Republic of Kosovo entered into force thus committing a grave violation of the applicant's rights guaranteed by Article 31 (2) of the Constitution"*.

24. The Applicant alleges that: *"the applicant's rights guaranteed by Article 23 of the Constitution were violated because the Supreme Court disregarded the notion of moral injury"*.

25. Moreover, the Applicant alleges that: *"the stance of the Constitutional Court on this matter is directly connected to the obligation of the state institutions to take more seriously the question of moral indemnification"*.

26. Finally, the Applicant asks the Court: (i) to declare his referral admissible, (ii) to hold a hearing in accordance with Rule 39 (2) of the Rules of Procedure, (iii) to hold that the Supreme Court has violated the applicant's rights guaranteed under Article 23 of the Constitution and (iv) to determine any rights or liabilities to the parties in this procedure which the Constitutional Court deems reasonable and legally grounded.

Assessment of admissibility

27. 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.

28. 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."

29. 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".

30. The Court further takes into account Rule 36 (1) (d) and (2) (b) of the Rules of Procedure which specify:

    (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".

31. In the concrete case, the Court notes that regular courts reinstated the Applicant back to his workplace and ordered his employer – in the name of pecuniary damage - to compensate unpaid salaries to the Applicant; however, in accordance with the law applicable at the material time the regular courts rejected the Applicant's statement of claim with regard to non-pecuniary damage.

32. In this connection, the Court notes that the Applicant alleges that: "*regular courts have erroneously applied Article 200 of the former - LOR which was applicable until 20 December 2012 when the LOR of the Republic of Kosovo entered into force thus committing a grave violation of the applicant's rights guaranteed by Article 31 (2) of the Constitution*".

33. The Court also notes that: (i) the regular courts reasoned that the law applicable at the material time did not list mental anguish experienced due to dismissal from work as one of the grounds which warrants pecuniary compensation, (ii) the Applicant's request for non-pecuniary damage was time-barred because of a statutory limitation and (iii) the Applicant is basically complaining that the regular courts should have applied one legal provision instead of another.

34. In the light of the allegations made by the Applicant and the reasoning given by the regular courts, the Court considers that it is not its task to deal with errors of fact or law allegedly committed by regular court unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution. It may not itself assess the facts which have led a regular court 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 action. (See the Case of *Garcia Ruiz v. Spain,* Application no. 30544/96, [GC], Judgment of 21 January 1999, para. 28).

35. 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).

36. 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 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).

37. 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).

38. Finally, the Court considers that the Applicant only enumerates and generally describes the content of constitutional provisions without substantiating exactly how those provisions were violated in his case as is required by Article 48 of the Law.

39. In these circumstances, the Court considers that the Applicant has not substantiated his allegations 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 Supreme Court of Kosovo had denied him the rights guaranteed by the Constitution.

40. Consequently, the Referral, on a Constitutional basis, is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (b) of the Rules of Procedure.

41. As to the Applicant's request to hold an oral hearing, the Court refers to Article 20 of the Law:

> *"1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.*
>
> *2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files".*

42. The Court considers that documents contained in the Referral are sufficient to decide this case as per wording of paragraph 2 of Article 20 of the Law.

43. Therefore, the Applicant's request to hold an oral hearing is rejected.

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, by majority, on 28 January 2016

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

KO47/16, Applicants: Aida Derguti, Bali Muharremaj, Enver Hoti and 25 other Deputies of the Assembly of the Republic of Kosovo, constitutional review of Decision No. 05-V-233, dated 26 February 2016, on the election of the President of the Republic of Kosovo

KO47/16, Resolution on Inadmissibility of 21 March 2016, published on 4 April 2016
Keywords: deputy, assembly, request for interim measure, public hearing, election of the President, manifestly ill-founded.

In the present Referral, twenty eight (28) deputies challenge the Decision No. 05-V-233 of the Assembly on "the election of the President of the Republic of Kosovo" of 26 February 2016, and at the same time, they requested to impose interim measure and to hold a hearing on this case.

The Applicants challenged the issue of a number of deputies required for a quorum necessary for the election of the President of the Republic of Kosovo, as provided by Article 86 paragraph 4 and 5 of the Constitution.
The Court concludes that it is neither a constitutional prerequisite nor a requirement for the validity of the decision for the election of the President of the Republic of Kosovo under Article 86, paragraphs 4 and 5 that all hundred and twenty (120) Deputies be present and voting, as stipulated by the Applicants' Referral.
The Court based on Article 42, paragraph 1.3 of the Law and Rule 36 (1), (d) and (2), (d) of the Rules of Procedure, the Referral is inadmissible as manifestly ill-founded on a constitutional basis, because the Applicants have not sufficiently substantiated their claims that the Decision of the Assembly *"on the election of the President of the Republic of Kosovo,"* is in violation of Article 86, paragraphs 4 and 5 of the Constitution.
Since the Applicant's Referral is manifestly ill-founded, and, therefore, inadmissible, the Court concluded that the request for interim measure can no longer be subject of the review, and, therefore, it must be rejected.

RESOLUTION ON INADMISSIBILITY
in
Case No. KO47/16
Applicants
Aida Dërguti, Bali Muharremaj, Enver Hoti
and 25 other Deputies of the Assembly of the Republic of Kosovo
Constitutional review of Decision No. 05-V-233, dated 26 February 2016, on the election of the President 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicants are Mrs. Aida Dërguti, Mr. Bali Muharremaj and Mr. Enver Hoti, who are also representing 25 other Deputies of the Assembly of the Republic of Kosovo (see Appendix).

Challenged decision

2. The Applicants challenge the Decision No. 05-V-233 of the Assembly of the Republic of Kosovo (hereinafter: the "Assembly"), *"on the election of the President of the Republic of Kosovo"* (hereinafter: "Decision of the Assembly"), taken during the extraordinary session of the Assembly on 26 February 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review by the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court") of the aforementioned Decision of the Assembly, by which Mr. Hashim Thaçi was elected the President of the Republic of Kosovo.

4. The Applicants claim that Article 86 [Election of the President], paragraphs 4 and 5, of the Constitution of the Republic of Kosovo (hereinafter: "the Constitution") have been violated because, according to the Applicants, "*[...] this election was accompanied by substantial and procedural violations of the Constitution of the Republic of Kosovo [...]*".

5. The Applicants also request the Court to impose an Interim Measure. In addition, the Applicants request the Court to hold a hearing and invite them to present their case.

Legal basis

6. The Referral is based on Articles 113.5 and 116 of the Constitution, Articles 27 and 42 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 4 March 2016, the Applicants submitted the Referral to the Court.

8. On 7 March 2016, the President of the Court, by Decision GJR. KO47/16, appointed Judge Gresa Caka-Nimani as Judge Rapporteur. On the same date, by Decision KSH. KO47/16, the President of the Court appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 7 March 2016, the Court notified the Applicants of the registration of the Referral.

10. On 7 March 2016, the Court sent a copy of the Referral to the President–Elect, Mr. Hashim Thaçi, and invited him to submit comments on the Referral, if any, by 14 March 2016. The Court did not receive any comments.

11. On 7 March 2016, the Court submitted a copy of the Referral to the President of the Assembly of Kosovo with the explicit request to have it distributed to all Deputies of the Assembly and to invite them to submit their comments on the Referral by 14 March 2016.

12. On 7 March 2016, the Court submitted a copy of the Referral to the President of the Republic of Kosovo, 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, if any, by 14 March 2016. The Court did not receive any comments.

13. On 14 March 2016, the President of the Assembly submitted to the Court his comments on the Referral.

14. On 21 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel made an unanimous recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

15. On 24 February 2016, following the decision of the Presidency of the Assembly, the President of the Assembly of the Republic of Kosovo summoned the Deputies for an extraordinary session to be held on 26 February 2016. The agenda for this extraordinary session contained one item: *the election of the President of the Republic of Kosovo*.

16. According to the Minutes submitted by the Applicants, the extraordinary session developed as it follows:

17. On 26 February 2016, the President of the Assembly opened the extraordinary session and announced that the two (2) candidates proposed for the office of President of the Republic of Kosovo were Mr. Hashim Thaçi and Mr. Rafet Rama.

18. The Assembly Commission for Legislation, Mandates, Immunities and the Rules of Procedure of the Assembly and Supervision of the Anti-Corruption Agency confirmed that it reviewed the documentation concerning the two (2) candidates and concluded that the candidates proposed for the office of President of the Republic of Kosovo fulfilled all necessary requirements prescribed by the provisions of the Constitution and the Law on the President of the Republic of Kosovo.

19. Thereupon, according to the Minutes of the extraordinary session, the extraordinary session was interrupted several times because some of the Deputies of the Assembly had released teargas in the Assembly Hall.

20. Consequently, the President of the Assembly announced that the Presidency of the Assembly had rendered a decision (Decision, 05-V-252) to exclude six (6) Deputies from participation in the extraordinary session because of their behavior and actions, which hindered the continuation of the work of the extraordinary session.

21. Thereafter, the Presidency of the Assembly also rendered a decision (Decision, 05-V-253) to exclude another five (5) Deputies on the same ground because of their behavior and actions hindered the continuation of the work of the extraordinary session.

22. In continuation, before the voting started, the President of the Assembly invited all parliamentary groups to nominate their respective representatives to the *ad hoc* Voting Commission on the Election of the President of the Republic of Kosovo (hereinafter: the "Commission"). The heads of the parliamentary groups of PDK, LDK, SLS and 6+ nominated their respective representatives to the Commission. In addition, one Deputy representing one of the parliamentary groups in the opposition, Vetëvendosje, was nominated to serve as a member in the Commission, claiming to also represent the other two parliamentary groups in the opposition, AAK and NISMA.

23. Thereafter, the President of the Assembly announced that Deputies representing the parliamentary groups in the opposition had left the extraordinary session. According to the Minutes of the extraordinary session, the representative of the parliamentary group of Vetëvendosje participated in the Commission's proceedings during the first and third rounds of voting.

24. The President of the Assembly opened the first round of voting and called the Deputies by their respective names to proceed to cast their vote in the ballot box. This procedure was managed and supervised by the Commission.

25. In the first round, eighty one (81) Deputies participated in the voting. Fifty (50) Deputies voted in favour of Mr. Hashim Thaçi, whereas four (4) Deputies voted in favour of Mr. Rafet Rama. Twenty seven (27) votes were invalid. Thereafter, the Commission declared that a second round of voting was to be held.

26. The Assembly then held a second round, where eighty one (81) Deputies participated in the voting. Sixty four (64) voted in favour of Mr. Hashim Thaçi, whereas two (2) Deputies

voted in favour of Mr. Rafet Rama. Fifteen (15) votes were invalid. Thereafter, the Commission declared that a third round of voting was to be held.

27. After the third round of voting was held, the Commission declared that eighty one (81) Deputies participated in the voting. Seventy one (71) voted in favour of Mr. Hashim Thaçi. None of the Deputies voted for Mr. Rafet Rama. Ten (10) votes were invalid.

28. According to the Commission's final Report, signed by all its members, eighty one (81) Deputies voted during the third round of voting. The Commission, in its Report, stated that Mr. Hashim Thaçi was elected President of the Republic of Kosovo.

29. On the basis of this Report, the President of the Assembly announced that Mr. Hashim Thaçi was elected President of the Republic of Kosovo.

Applicants' allegations

30. The Applicants claim that "*[...] this election was accompanied by substantial and procedural violations of the Constitution of the Republic of Kosovo [...]*". In this regard, the Applicants allege violations of Article 86 paragraphs 4 and 5, of the Constitution.

31. The Applicants complain that, during the three rounds of voting, the requirements of Article 86, paragraph 4, were not met for the following reasons:

> *"Based on the voting result of the third round, which like the first two rounds of voting was characterized by violations of the Constitution, namely of Article 86 (4) and (5), and Article 27 of the Rules of Procedure of the Assembly, the President of the Assembly announced the election of the President of the Republic of Kosovo. In this case, regarding the quorum provided under Article 86 (4) on the election of the President of the Republic, in Judgment KO29/11 of 30 March 2011 (Sabri Hamiti and other Deputies, Constitutional Review of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President of the Republic of Kosovo, dated 22 February 2011), in paragraph 85 "the Court notes that, as to the number of votes required for the election of the President of the Republic of Kosovo, Article 86-4 of the Constitution provides that the President of the Republic of Kosovo shall be elected by a two thirds (2/3) of the "**votes of all deputies"** (in the original Albanian version "me dy të tretat (2/3) e votave të të gjithë deputetëve") of the Assembly, meaning that all 120 deputies should vote, minus those properly excused by the President of the Assembly and that the candidate obtaining 80 or more votes of all deputies (in the first or second round) will be elected. Only if a 2/3 majority is not reached, a third round takes place. Article 27 of the Law on Deputies and Article 27(4) of the Rules of Procedure of the Assembly, contain identical wording: "two thirds (2/3) **of the votes of all deputies** of the Assembly". The explicit requirement and the finding of the Constitutional Court that "The requirement of Article 86, that all deputies had to vote, was, therefore, not met." is applicable also to the session of 26 March 2016* [Court's correction: 26 February 2016]. *In other words, participation of all deputies in the session is not only their duty, but it is also a necessary "condition" for the validity of the elections."*

32. Based on the Referral, the Applicants refer to the Judgment of the Court in Case KO29/11, Applicants: *Sabri Hamiti and other deputies*, Judgment of 30 March 2011 (hereinafter: Judgment in Case KO29/11). They consider that the procedure for the election of the

President of the Republic of Kosovo is unconstitutional and invalid, because according to the Applicants, not all hundred and twenty (120) Deputies participated in the voting.

33. In addition, the Applicants raise a number of questions in the form of a request to the Court to submit them to the Assembly for clarification. The Applicants request the Court to address the Assembly with the following questions:

*a) Were **all deputies** of the Assembly present in the session of 26 February 2016? If not, which is evident because 39 deputies, or about 1/3 of the deputies of the Assembly, were absent, were the deputies who were absent in the session of 26 February 2016 **excused by the President of the Assembly** for their absence?*

b) If the deputies were not excused by the President of the Assembly, what were the reasons for their absence?

c) When the session of 26 February 2016 was held, was the Assembly of Kosovo in full composition as is foreseen by Article 64 (1) [Structure of Assembly] of the Constitution "The Assembly has one hundred twenty (120) deputies elected [...]"?

d) If the Assembly was not in full composition, which deputies were absent without being excused by the President of the Assembly?

e) How is justified the fact of the absence of the deputy and Head of the Parliamentary Group of Vetëvendosje Movement, Mr. Glauk Konjufca, who is in prison without the immunity of the Deputy being waived by the Assembly of Kosovo, as is foreseen by the Constitution under Article 75 (1) and (2), Law on Rights and Responsibilities of the Deputy No. 03/L-111 under Article 9 (2) and (9) for offenses which are already amnestied by Law on Amnesty No. 04/L-209?

(f) How is justified the lack of full composition of the Assembly, namely failure to immediately fill the vacant seat of deputy as per requirement of Article 70 (4) [Mandate of Deputies] of the Constitution following the resignation of the Deputy, Mr. Ramush Haradinaj?

g) How is explained the collective exclusion of the deputies of opposition parties from the session, as the President of the Assembly did in the session of 26 February 2016?

h) How does the Assembly explain the unjustified absence, respectively without excuse of the President of the Assembly, of the deputies of the governing coalition parties: Adem Salihaj, Anton Quni, Gëzim Kelmendi, Hatim Baxhaku, Shpejtim Bulliqi, Vjosa Osmani?

i) Since "The election of the President of Kosovo who, pursuant to Article 83 [Status of the President], is the Head of State and represents the unity of the people of the Republic of Kosovo, is of such importance [...]" according to Judgment KO29/11 of 30 March 2011, paragraph 84, what were the reasons for the absence of the deputies from the governing coalition parties?

34. The Applicants consider that *"All raised questions deserve special attention of the Court, as in the election of the President we are dealing not only with the Head of State, but more*

importantly we are dealing with the office that represents the unity of the people of the Republic of Kosovo."

Applicants' requests

35. The Applicants request the Court to declare unconstitutional the Decision of the Assembly on the election of the President of the Republic of Kosovo.

36. In addition, the Applicants request the Court to impose an Interim Measure by suspending the Decision of the Assembly until the Court has rendered a decision. The Applicants reason their request by stating that *"These measures are necessary to avoid risks or irreparable damage for the future of the country"*.

37. The Applicants also request the Court to hold a hearing and invite them to present their case.

Comments submitted by the President of the Assembly

38. In his submission to the Court, the President of the Assembly informed the Court about the procedure followed for the election of the President of the Republic of Kosovo during the extraordinary session held on 26 February 2016.

39. In addition, the President states that the procedure for the election of the President is evidenced by the Reports of the *ad hoc* Voting Commission for the election of the President, as well as the Minutes of the extraordinary session of the Assembly. According to the submission of the President of the Assembly:

> *"[...]*
>
> *8. After the implemented procedure for the election of the President of the Republic of Kosovo, described according to the abovementioned data, the submitter of this reply notes that the Assembly of the Republic of Kosovo applied the procedure for the election of the President, in accordance with Article 86 of the Constitution, due to the following reasons: In the procedure for the election of the President were nominated and participated at least two candidates; The nominations of the candidates were verified and it was concluded that they are in accordance with Article 86 of the Constitution. The three rounds of voting in the implementation of the procedures for the election of the President of the Republic of Kosovo were conducted on equal conditions, because in the three rounds of voting, 2/3 of all deputies of the Assembly participated in the voting. During the conduct of the three rounds of voting, no break was announced and took place; Three rounds of voting, during the conduct of the procedure for the election of the President of the Republic of Kosovo, were conducted as a single procedure; During the conduct of the three rounds of voting, 2/3 of all deputies of the Assembly of the Republic of Kosovo were present; During the conduct of the three rounds of voting for the election of the President of the Republic of Kosovo, 2/3 of all deputies of the Assembly of the Republic of Kosovo have voted.*
>
> *9. The submitter of this reply reiterates that all other legal and political actions taken by the Assembly and the deputies as individuals, during the conduct of the extraordinary session, of 26 February 2016, for the election of the President of the*

Republic of Kosovo, do not constitute constitutional issues that are related to the constitutional procedure of the election of the President, in accordance with Article 85 and 86 of the Constitution, and furthermore, these actions do not affect the constitutional aspect of the conduct of the procedure for the election of the President of the Republic of Kosovo.

[...].”

40. Accordingly, in his comments submitted to the Court, the President of the Assembly of the Republic of Kosovo states that the provisions of Article 86 of the Constitution were respected during the Assembly extraordinary session of 26 February 2016 for the election of the President of the Republic of Kosovo.

Scope of the Referral

41. The Court recalls that the Applicants contest the constitutionality of Decision No. 05-V-233 adopted by the Assembly *“on the election of the President of the Republic of Kosovo”* as regards to its substance and the procedure followed on the basis of Article 113, paragraph 5 of the Constitution.

42. In this respect, the Applicants claim that this Decision has violated Article 86, paragraphs 4 and 5, of the Constitution. In particular, they claim that the required quorum necessary for the election of the President was not present, as required by Article 86, paragraph 4 and 5, of the Constitution.

43. The Court observes that the Applicants have not presented any arguments in relation to the substance of the contested Decision.

44. In addition, to the extent that the Applicants have also requested the Court to address a series of questions to the Assembly, the Court finds that this request does not come within the scope of referrals submitted under Article 113.5 of the Constitution. Article 113.5 provides “*Ten (10) or more Deputies of the Assembly, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed*” [The Court notes that the Serbian version of this Article reads as follows: [...] have the right to contest the constitutionality of any law adopted by the Assembly [...]”]. The Court also notes that under the Constitution, it has no jurisdiction to serve as an intermediary for addressing Applicants’ questions to the Assembly.

45. Therefore, the Court finds that based on the jurisdiction of the Court provided by Article 113.5 of the Constitution, the Scope of this Referral is limited to the question of compatibility with Article 86, paragraphs 4 and 5, of the Constitution, as it pertains to the procedure followed in the Assembly when voting for the election of the President of the Republic of Kosovo on 26 February 2016.

Admissibility of the Referral

46. In order for the Court to be able to adjudicate on the Applicants' 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 met.

47. The Court needs to determine whether the Applicants can be considered as an authorized party. In that respect, Article 113.5 of the Constitution provides that:

> *"Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed".*

48. In the present Referral, twenty eight (28) Deputies challenge the Decision No. 05-V-233 of the Assembly on "the election of the President of the Republic of Kosovo" of 26 February 2016. Therefore, the Applicants are an authorized party, entitled to refer this case to the Court, by virtue of Article 113.5 of the Constitution.

49. As to the further requirement of Article 113.5 of the Constitution, that the Applicants must have submitted the Referral *"within eight (8) days from the date of adoption"* of any decision by the Assembly, the Court notes that the Assembly adopted its Decision on 26 February 2016, whereas the Applicants submitted the Referral to the Court on 4 March 2016. The Applicants, therefore, have met the deadline for filing a referral to the Court, as provided by Article 113.5 of the Constitution.

50. The Court needs to also assess whether the Applicants have fulfilled the conditions laid down in Article 42 of the Law and the Admissibility Criteria laid down in Rule 36 of the Court's Rules of Procedure.

51. Article 42 of the Law specifies the criteria for the Accuracy of the Referral, when the referrals are made pursuant to Article 113.5 of the Constitution. Article 42 of the Law provides:

> *"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."*

52. In addition, the Court needs also to assess whether the Applicants have sufficiently substantiated their claims as required by Rule 36 of the Rules of Procedure.

53. In this respect, Rule 36 of the Rules of Procedure contains the following requirement:

> *"(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;"

54. In continuation, in accordance with the Scope of the Referral as determined by the Court in this Resolution, the Court will only assess whether the Applicants' Referral complies with Article 42 of the Law and Rule 36 of the Rules of Procedure as it pertains to the question whether, during the procedure for the election of the President of the Republic of Kosovo, Article 86, paragraphs 4 and 5, have been violated.

55. In this respect, the Court refers to Article 86 [Election of the President], paragraphs 4 and 5, of the Constitution which provides that:

"[…]

4. The President of the Republic of Kosovo shall be elected by a two thirds (2/3) majority of all deputies of the Assembly.

5. If a two thirds (2/3) majority is not reached by any candidate in the first two ballots, a third ballot takes place between the two candidates who received the highest number of votes in the second ballot, and the candidate who receives the majority of all deputies of the Assembly shall be elected as President of the Republic of Kosovo.

[…]."

56. In terms of the procedure followed for the election of the President of the Republic of Kosovo, three (3) rounds of voting were conducted. All three (3) voting rounds were conducted by secret ballot. From these three (3) voting rounds, the following conclusions can be drawn:

57. In the first round of voting, eighty one (81) Deputies cast their vote. Fifty (50) Deputies voted in favour of Mr. Hashim Thaçi, whereas four (4) Deputies voted in favour of Mr. Rafet Rama. Twenty seven (27) votes were invalid.

58. In the second round of voting, eighty one (81) Deputies cast their vote. Sixty four (64) voted in favour of Mr. Hashim Thaçi, whereas two (2) Deputies voted in favour of Mr. Rafet Rama. Fifteen (15) votes were invalid.

59. In the third round of voting, eighty one (81) Deputies cast their vote. Seventy one (71) voted in favour of Mr. Hashim Thaçi. None of the Deputies present voted for Mr. Rafet Rama. Ten (10) votes were invalid.

60. Therefore, the Court notes that it is clear that in all three (3) rounds of voting eighty one (81) Deputies participated in the vote.

61. The Court observes that the Applicants' complaint is specifically concerned with the question of the required quorum for the election of the President of the Republic of Kosovo, as provided by Article 86, paragraphs 4 and 5 of the Constitution.

62. The Court notes that quorum refers to the minimum number of Deputies, who must be present for any decision to be validly taken. Article 69, paragraph 3 of the Constitution provides that the Assembly of Kosovo has its quorum when more than one half (1/2) of all Assembly Deputies are present. This provision applies unless the Constitution specifically requires a greater majority for a decision to be taken. Where the Constitution specifically prescribes that a greater number of Deputies is required for a decision to be taken, then the required majority determines the necessary quorum.

63. The Court reiterates that for the process for the election of the President of the Republic of Kosovo to be valid, in the first and second rounds of voting, at least two thirds (2/3) of all Deputies must be present and voting, whereas in the third round, at least the majority of all Deputies must be present and voting, in accordance with paragraphs 4 and 5 of Article 86 of the Constitution.

64. For the first round to be valid, at least two thirds (2/3) of all Deputies of the Assembly must be present and voting. If this requirement is not met, the first round will be null and void. Accordingly, a second round cannot take place. For the second round to be valid, the same number, namely, at least two thirds (2/3) of all Deputies of the Assembly must be present and voting. If this requirement is not met, the second round of voting will be null and void. Only when the first and the second rounds of voting are valid, the third round takes place. In order to be valid, the third round requires at least the presence and voting of the majority of all Deputies of the Assembly.

65. As the Constitution stipulates in paragraphs 4 and 5 of the Article 86, the candidate who receives the votes of at least two thirds (2/3) of all Deputies of the Assembly in the first or the second round, or the votes of at least the majority of all deputies of the Assembly in the third round, will be elected the President of the Republic of Kosovo.

66. Accordingly, in the present case, it is clear that at least two thirds (2/3) of all Deputies were present and voting in the first and the second rounds of voting, whereas the required majority of all Deputies was also present and voting in the third round of voting.

67. In the present Referral, the Applicants raise specific concerns due to the fact that not all hundred and twenty (120) Deputies were present or formally excused for their absence during the extraordinary session. In this regard, the Applicants quote specifically paragraph 85 of the Judgment in Case KO29/11. Paragraph 85 of the aforementioned Judgment in Case KO29/11 states:

> *"In this respect, the Court notes that, as to the number of votes required for the election of the President of the Republic of Kosovo, Article 86.4 of the Constitution provides that the President of the Republic of Kosovo shall be elected by a two thirds (2/3) of the "**votes of all deputies**" (in the original Albanian version "me dy të tretat (2/3) e votave të të gjithë deputetëve") of the Assembly, meaning that all 120 deputies should vote, minus those properly excused by the President of the Assembly, and that the candidate obtaining 80 or more votes of the votes of all deputies (in the first or second round) will be elected. Only if a 2/3 majority is not reached, a third round takes place. Article 27 of the Law on Deputies and Article 27(4) of the Rules of*

Procedure of the Assembly, contains identical wording: "two thirds (2/3) of the ***votes of all deputies*** *of the Assembly".*

68. The Applicants in their opinion consider that paragraph 85 of the Judgment in Case KO29/11 implies that if all hundred and twenty (120) Deputies are either not present or formally excused by the President of the Assembly that then the President of the Republic of Kosovo could not be considered to be elected by two thirds (2/3) of all Deputies of the Assembly as required by Article 86, paragraph 4.

69. The Court first recalls that in the Judgment in Case KO 29/11 it had, among others, found that in the first and second rounds of voting there had been an insufficient number of Deputies present to make up at least the required two thirds (2/3) majority, as required by Article 86, paragraphs 4 and 5 of the Constitution. Accordingly, the first and the second rounds of voting had been null and void and a second or a third round, respectively, could not have taken place. Whereas in the present case, the number of Deputies present and voting during the three rounds of voting was sufficient to meet the required majority for the election of the President as foreseen in Article 86, paragraphs 4 and 5.

70. Furthermore, the Court notes that the interpretation of paragraph 85 of the Judgment in Case KO29/11 as maintained in the Applicant's Referral does not correspond with the Court's assessment made in that Judgment. Paragraph 85 of the Judgment in Case KO29/11 must be understood within the context of the overall scope of that Judgment and in particular, its section as it pertains to the "Vote by the Assembly", specifically, paragraphs 80 through 84 of the same Judgment. These paragraphs provide:

80. Moreover, Law No. 03/L-111 on Rights and Responsibilities of the Deputy (hereinafter: the "Law on Deputies") and Articles 3 and 21 of the Rules of Procedure of the Assembly, adopted on 29 April 2010 further emphasize that the Deputies of the Assembly are representatives of the people and shall have an equal right and obligation to participate fully in the proceedings of the Assembly and carry out their task as representatives of the people of Kosovo in accordance with the Constitution, the Law and the Rules of Procedure of the Assembly. That is to say, by receiving the vote of the citizens, deputies have an obligation towards them, inter alia, as stipulated by Article 40 [Obligations] of the Law on Deputies, by being obliged to participate in the Plenary Sessions and in meetings of the assisting bodies of the Assembly in which they are a member. If the deputy cannot participate in the Assembly Sessions or in the meetings of the assisting authorities of the Assembly in which he/she is a member, he/she must inform in time the President of the Assembly respectively the President, Vice President of that assisting body, by submitting the reasons for his/her absence, as required by Article 40.3 of the Law on Deputies.

81. Their obligation as deputies is further reflected in the oath that the Assembly Members must take before the Assembly after the verification of their mandates, pursuant to Article 10 of the Rules of Procedure of the Assembly, providing:

"I, Member of the Assembly of the Republic of Kosovo, swear that honestly and with devotion, shall carry out my duty and represent the people with dignity, shall work in the interest of Kosovo and all its citizens, shall be committed to protection and respect of the constitutionality and lawfulness, for protection of the territorial and

institutional integrity of Kosovo, for guaranteeing human rights and freedoms, in accordance with the domestic laws and European standards. I swear".

82. Furthermore, the Court emphasizes that, pursuant to Article 27 of the Rules of Procedure of the Assembly, the members of the Assembly shall comply with the Code of Conduct that is annexed to those Rules. The Code of Conduct clearly provides that the Members of the Assembly have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

83. In these circumstances, all 120 deputies of the Assembly should feel obliged, by virtue of the Constitution, the Law on Deputies, the Rules of Procedure of the Assembly and the Code of Conduct, to participate in the plenary sessions of the Assembly and to adhere to the procedures laid down therein, but most of all an obligation vis-a-vis the people of Kosovo that elected them.

84. The election of the President of Kosovo who, pursuant to Article 83 [Status of the President], is the Head of State and represents the unity of the people of the Republic of Kosovo, is of such importance, that all deputies, as the representatives of the people of Kosovo, should consider it their constitutional duty, unless excused by the President of the Assembly, to participate in the procedure for the election of the President as laid down in Article 86 [Election of the President] of the Constitution.

71. In addressing the Applicants' claims, the Court first notes and recalls paragraph 1 of Article 70 [Mandate of the Deputies] of the Constitution that *"Deputies of the Assembly are representatives of the people and are not bound by any obligatory mandate"* as well as Article 74 [Exercise of Function] of the Constitution that *"Deputies of the Assembly of Kosovo shall exercise their function in best interest of the Republic of Kosovo and pursuant to the Constitution, Laws and Rules of Procedure of the Assembly"*.

72. In continuation, the Court notes that, the wording that "*all 120 deputies should vote*" referred to in paragraph 85 of the Judgment in Case KO29/11, must be understood within the meaning of paragraphs 83 and 84 of that Judgment. The obligation of Deputies to participate in the plenary sessions of the Assembly is regulated by and derives from the Law on the Rights and Responsibilities of Deputies (hereinafter: the "Law on Deputies"), Rules of Procedure of the Assembly and the Deputies' Code of Conduct. Failure to fulfill the obligations as set forth by the Law on Deputies, does not invalidate a decision of the Assembly, as long as the necessary majority for a decision to be taken as specified in the Constitution, is maintained in the Assembly.

73. Further, the Court notes that, the wording "*minus those properly excused by the President of the Assembly*", referred to in paragraph 85 of Judgment in Case KO29/11, must be understood within the meaning of paragraph 80 to 82 of that Judgment. As referred to in paragraph 80 of Judgment in Case KO29/11, the legal obligation of Deputies to inform the President of the Assembly, respectively the President, Vice President of an assisting body, by submitting the reasons for his/her absence, derives from and is required by the Law on Deputies, Article 40.3 specifically. Again, failure to fulfill the obligations as set forth by the Law on Deputies, does not invalidate a decision of the Assembly, as long as the necessary majority for a decision to be taken as specified in the Constitution, is maintained in the Assembly.

74. Accordingly, the Court concludes that it is neither a constitutional prerequisite nor a requirement for the validity of the decision for the election of the President of the Republic of Kosovo under Article 86, paragraphs 4 and 5 that all hundred and twenty (120) Deputies be present and voting, as stipulated by the Applicants' Referral.

75. Based on the foregoing, the Applicants' claim as to the violation of Article 86, paragraphs 4 and 5, does not stand.

76. Therefore, based on Article 42, paragraph 1.3 of the Law and Rule 36 (1), (d) and (2), (d) of the Rules of Procedure, the Referral is inadmissible as manifestly ill-founded on a constitutional basis, because the Applicants have not sufficiently substantiated their claims that the Decision of the Assembly "on the election of the President of the Republic of Kosovo", is in violation of Article 86, paragraphs 4 and 5 of the Constitution.

Request for Interim Measure

77. As to the request for interim measures, the Court notes that the Applicants request the Court to suspend the Decision of the Assembly until the Court has rendered a decision.

78. The Applicants reason their request by stating that:

> *"These measures are necessary to avoid risks or irreparable damage for the future of the country".*

79. Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, provide that *"when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures".*

80. The Court further refers to Rule 55 (4) of the Rules of Procedure, which provides:

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

81. However, since the Applicant's Referral is manifestly ill-founded and, therefore, inadmissible, the Court concludes that the request for interim measure can no longer be subject of the review, and, therefore, it must be rejected.

Request for a hearing

82. The Court recalls that the Applicants request the Court to hold a hearing and invite them to present their case.

83. In this respect, the Court notes that based on Rule 39 [Right to a Heraring and Waiver] of its Rules of Procedure: *"Only referrals determined to be admissible may be granted a hearing before the Court, unless the Court by majority vote decides otherwise."* The

Court took into account the documents that were provided and did not require any additional information in order to reach its Decision on the case. For this reason, the Court considers that the hearing is not necessary.

FOR THESE REASONS

The Constitutional Court, based on Article 113.5 of the Constitution, Article 27 and Article 42, paragraph 1.3 of the Law and Rules 36 (1), (d) and (2), (d), 39 and 55 (4) of the Rules of Procedure, on 21 March 2016, by majority

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO REJECT the Request for Public Hearing;

IV. TO NOTIFY this Decision to the Parties;

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

VI. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Gresa Caka-Nimani	Arta Rama-Hajrizi

Appendix

Vetëvendosje

1. Visar Ymeri
2. Albin Kurti
3. Aida Dërguti
4. Sali Salihu
5. Ilir Deda
6. Shqipe Pantina
7. Albulena Haxhiu
8. Mytaher Haskuka
9. Besnik Bislimi
10. Besa Baftiu
11. Ismajl Kurteshi
12. Rexhep Selimi
13. Puhie Demaku
14. Fisnik Ismaili

AAK

15. Bali Muharremaj
16. Rrustem Berisha
17. Daut Haradinaj
18. Donika Kadaj-Bujupi
19. Teuta Haxhiu
20. Lah Brahimaj
21. Pal Lekaj
22. Time Kadrijaj

NISMA

23. Fatmir Limaj
24. Valdete Bajrami
25. Haxhi Shala
26. Zafir Berisha
27. Shukrije Bytyqi

Enver Hoti

KI15/16, Applicant: Ramadan Muja, constitutional review of Decision PA-II-KZ-II-7/15 of the Supreme Court of Kosovo, of 26 November 2015

KI15/16, resolution on inadmissibility, of 16 March 2016, published on 5 April 2016

Key words: *individual referral, request for interim measure, premature, right to fair and impartial trial, right to equality before the law, judicial protection of rights, non-exhaustion of legal remedies*

In essence, the Applicant alleges that the Supreme Court, in admitting the appeal filed by the State Prosecutor of the Republic of Kosovo against the Decision (PAKR 349/14 of 22 June 2015) of the Court of Appeals, erroneously applied the provisions of Chapter XXI of the CPCK and in doing so violated Articles 24, 31 and 54 of the Constitution and Article 6 of the ECHR. In addition, the Applicant requests the Court to impose an interim measure *"... ordering the Court of Appeal of Kosovo to not take any procedural actions to decide as stipulated in the Decision of the Supreme Court of the Republic of Kosovo ..."*.

On 10 March 2016, the Supreme Court of Kosovo informed the Court that a request for protection of legality (Pkl. no. 14/2016) was pending before the Supreme Court in the same legal matter.
The Court concluded that all the issues raised by the Applicant must first have been considered by the regular courts, including by the Supreme Court of Kosovo in the pending proceedings upon the request for protection of legality. Additionally, the Court rejected the request for interim measure as inadmissible, because the Applicant has not shown a *prima facie* case on the admissibility of the Referral. The referral was declared inadmissible.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI15/16
Applicant
Ramadan Muja
Constitutional Review of Decision PA-II-KZ-II-7/15 of the Supreme Court of Kosovo, of 26 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Ramadan Muja from Prizren (hereinafter: the Applicant), who is represented by Mr. Ruzhdi Berisha, a lawyer from Prizren.

Challenged Decision

2. The Applicant challenges Decision PA-II-KZ-II-7/15 of the Supreme Court of Kosovo, of 26 November 2015.

Subject Matter

3. The subject matter is the constitutional review of the above-mentioned Decision of the Supreme Court of Kosovo. The Applicant considers that the Decision violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 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, "*ordering the Court of Appeal of Kosovo to not take any procedural actions to decide as stipulated in Decision of the Supreme Court of Kosovo…*".

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

Proceedings before the Court

6. On 13 January 2016 the Applicant posted the referral via regular mail service, which the Court received on 22 January 2016.

7. On 12 February 2016, by Decision GJR. KI15/16, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH. KI15/16, the President of the Court, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.

8. On 25 February 2016 the Court informed the Applicant and the Supreme Court of Kosovo about the registration of the Referral.

9. On 3 March 2016 the Court requested the Applicant to provide it with any additional information regarding any judicial proceedings pending before the regular courts on the same legal matter or any legal remedies filed in respect of the same legal matter as the subject matter of the referral.

10. On the same date the Court requested the Supreme Court to inform it about any judicial proceedings pending before the Supreme Court in respect of the same legal matter.

11. On 10 March 2016 the Supreme Court submitted a response to the Court's request, confirming that a legal proceeding was pending before the Supreme Court in the same legal matter, namely a request for protection of legality.

12. On the same date the Applicant's legal representative submitted a response to the Court's request, noting that he is representing the Applicant in the criminal case, and that there are other defendants in the case.

13. In his response, the legal representative states that pursuant to Article 408 paragraph 4 of the CPC there is no appeal possible from the challenged Decision of the Supreme Court (PA-II-KZ-7/15). Furthermore, he informs the Court that as the defense attorney for the Applicant he has not filed "*any other legal remedies in this legal criminal matter*". At the same time, as a defense attorney he is not "*aware whether any of the lawyers of the accused has filed any legal remedy*".

14. On 16 March 2016 the Review Panel deliberated on the case and unanimously recommended to the Court to declare the Referral inadmissible.

Summary of Facts

15. On 27 February 2013 the Public Prosecutor filed an indictment against Ramadan Muja and others for the criminal offence of abusing official position or authority, under Article 422 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).

16. On 25 March 2013 a preliminary hearing was held in the presence of the defendants, defense lawyers and the prosecutor.

17. On 13 August 2013 the court hearings began and 28 (twenty-eight) hearing sessions were conducted within the main hearing.

18. On 13 March 2014 Basic Court in Prizren, by Judgment (P. no. 171/13; PP. no.147/2011), found the Applicant guilty of commission "*of the criminal offence of abusing official position or authority in continuity (items 1 to 4) and partially in co-perpetration (items 2 to 4), in accordance with Article 422, paragraph 1 and 2, sub-paragraphs 2.1 and 2.2, in conjunction with Article 31 and 81 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).*"

19. On 27 May 2014 the lawyers for the Applicant and his co-defendants filed appeal against the Judgment (P. no. 171/13; PP. no. 147/2011) of the Basic Court in Prizren.

20. On 22 July 2015 the Court of Appeal of Kosovo rendered Decision (PAKR 349/14), by majority of votes, which approved the appeal filed by the defense lawyers, annulled the Judgment of the Basic Court in Prizren (P. no. 171/13, PP. no. 147/2011 of 13 March 2014), and ordered that:

    "The case is remanded to the Basic Court in Prizren for retrial".

21. On 04 September 2015 the State Prosecutor of the Republic of Kosovo filed an appeal to the Supreme Court against Decision (PAKR 349/14 of 22 June 2015) of the Court of Appeal.

22. On an unspecified date the lawyers for the Applicant and his co-defendants filed a response to the appeal of the State Prosecutor against the Judgment of the Court of Appeal stating that, *"the appeal is unlawful and also inadmissible",* that Article 407 of the Criminal Procedure Code of Kosovo (hereinafter: CPCK) accurately describes the cases when an appeal against the decision of the Court of Appeal may be filed, and proposing to the Supreme Court to reject the appeal of the State Prosecutor of the Republic of Kosovo as inadmissible.

23. On 26 November 2015 the Supreme Court of Kosovo, by Decision (PA-II-KZ-II. 7/15), approved the appeal filed by the State Prosecutor of the Republic of Kosovo against the Decision (PAKR 349/14 of 22 June 2015) of the Court of Appeal, and ordered the following:

    "*The Decision (PAKR 349/14 of 22 June 2015) of the Court of Appeal "[...] is annulled and the case is remanded to the Court of Appeal for reconsideration by the new trial panel."*

24. On 10 March 2016 the Supreme Court of Kosovo informed the Court that a request for protection of legality (Pkl.nr. 14/2016) was pending before the Supreme Court in the same legal matter.

Applicant's allegations

25. In essence, the Applicant alleges that the Supreme Court, in admitting the appeal filed by the State Prosecutor of the Republic of Kosovo against the Decision (PAKR 349/14 of 22 June 2015) of the Court of Appeals, erroneously applied the provisions of Chapter XXI of the CPCK and in doing so violated Articles 24, 31 and 54 of the Constitution and Article 6 of the ECHR.

26. The Applicant alleges that the Decision (PA-II-KZ-II 7/15, of 26 November 2015) of the Supreme Court of Kosovo violated his rights as protected by the Constitution and the ECHR. The Applicant elaborates his allegations very extensively in three pages of his Referral filed with the Court, attempting to substantiate such allegations also with the case law of the European Court of Human Rights (hereinafter: ECtHR).

27. The Applicant further argues that *"by no provision of the CPCK is provided the procedure for the Supreme Court to decide regarding appeal against the Decision of the Court of Appeal that annuls the first instance Judgment. The Code does not envisage this procedural action, thus such an appeal is inadmissible."*

28. From the above, the Applicant emphasizes that "[...] *the conclusion that the appeal of the State Prosecutor/EULEX Prosecutor [...] should have been quashed immediately by the Court of Appeal pursuant to Article 411, paragraph 2 of the CPCK. Since the Court of Appeal did not act accordingly, then the Supreme Court of the Republic of Kosovo should have done that pursuant to paragraph 9 of the same Article of the CPCK."*

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

> *"TO DECLARE the Referral admissible,*
>
> *TO HOLD that Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], and Article 54 [Judicial Protection of Rights] of the Constitution, as well as Article 6 of the ECHR have been violated,*
>
> *TO ANNUL Decision PA-II-KZ-II-7/2015, of the Supreme Court of the Republic of Kosovo, of 26 November 2016 and to remand the matter to the Court of Appeal of Kosovo to decide pertaining to the admissibility of the appeal of State Prosecutor submitted against Decision PAKR 349/14, of the Court of Appeal of 22 July 2015."*

30. In addition, the Applicant requests the Court to impose an interim measure *"... ordering the Court of Appeal of Kosovo to not take any procedural actions to decide as stipulated in the Decision of the Supreme Court of the Republic of Kosovo..."*.

Assessment of the Admissibility of the Referral

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

32. The Court refers to Article 113.7 of the Constitution, which stipulates:

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

33. The Court mentions also Article 47.2 of the Law, which provides:

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

34. Furthermore, Rule 36 (1) (b) of the Rules of Procedure provides:

> *"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."*

35. The Court notes that the Applicant challenges Decision (PA-II-KZ-II. 7/15 of 26 November 2015) of the Supreme Court of Kosovo, which ordered that *"the case be remanded to the Court of Appeal for reconsideration by a new trial panel"*.

36. Basically, the Applicant alleges that by approving the appeal filed by the State Prosecutor of the Republic of Kosovo against the Decision (PAKR 349/14, of 22 June 2015) of the Court of Appeal, the Supreme Court has erroneously applied the provisions of the CPCK and thus violated Articles 31, 24 and 54 of the Constitution, and Article 6 ECHR.

37. At the same time as submitting this referral to the Court, the question of the permissibility of the appeal submitted by the State Prosecutor of the Republic of Kosovo against the Decision (PAKR 349/14 of 22 June 2015), was submitted to the Supreme Court, through a request for protection of legality. This request is registered with the Supreme Court under number Pkl.nr. 14/2016.

38. From the above, it follows that the proceedings before the regular courts on the questions raised by the Applicant before the Constitutional Court have not been completed.

39. The Court concludes that all the issues raised by the Applicant must first have been considered by the regular courts, including by the Supreme Court of Kosovo in the pending proceedings upon the request for protection of legality.

40. In this regard, the Court reiterates that the regular courts are independent in exercising their legal powers and it is their constitutional obligation to interpret the issues of fact and law which are relevant to the cases filed before them.

41. The rationale for the rule that the proceedings before the regular courts must first be completed is in order to give 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 constitutional rights. (see Resolution on Inadmissibility, *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo*, Kl41/09, of 21 January 2010, and see, *mutatis mutandis*, EtCHR, *Selmouni vs. France*, No. 25803/94, Decision of 28 July 1999).

42. The principle is that the machinery of protection established with the Constitutional Court is subsidiary to the regular system of judiciary safeguarding human rights (See, *inter alia*, ECtHR Judgment *Handyside v. United Kingdom*, of 7 December 1976, no. 5493/72, paragraph 48, and ECtHR Judgment *Aksoy v. Turkey* of 18 December 1996, no. 21987/93, paragraph 51).

43. Accordingly, the Constitutional Court cannot assess the alleged constitutional violations, without previously providing the opportunity to the regular courts to finalize the

proceedings filed before them, in order to allow them the opportunity to correct and eliminate any violations of the Constitution.

44. Therefore, the Court finds that the proceedings before the regular courts on the questions raised by the Applicant before the Constitutional Court have not been completed. Thus, 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, the Referral is premature and as such inadmissible.

Request for Interim Measure

45. As mentioned above, the Applicant also requests the Court to impose an interim measure such that the Court *"... orders the Court of Appeal of Kosovo to not take any procedural actions to decide as stipulated in the Decision of the Supreme Court of the Republic of Kosovo..."*.

46. In order to approve the request for interim measure, in accordance with Rule 55 (4 and 5) of the Rules of Procedure, the Court must determine that:

> *"Rule 55 (4) (a) the party requesting interim measures has shown [...] a prima facie case on the admissibility of the referral;*
>
> *[...]*
>
> *Rule 55 (5) If the party requesting interim measures has not made this necessary showing, the review Panel shall recommend denying the application."*

47. As noted above, the Applicant's referral is inadmissible because the subject matter of the Referral is still pending before the regular courts. For this reason, the Applicant has not shown a *prima facie* case on the admissibility of the Referral. Accordingly, the request for an interim measure should be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 36 (1) (b) and 55 (5) of the Rules of Procedure, on 16 March 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measure;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Arta Rama-Hajrizi

KI116/15, Applicant: Arbenita Ahmeti, Constitutional review of Judgment Rev. no. 151/2015, of the Supreme Court of Kosovo, of 19 May 2015

KI116/15, resolution on inadmissibility, of 10 February 2016, published on 6 April 2016

Key words: *individual referral, alimony, judicial protection of rights, protection of property, manifestly ill-founded.*

On 19 May 2015, the Supreme Court of Kosovo in Prishtina (Judgment Rev. no. 151/2015) rejected the request for revision as ungrounded and upheld the Judgment (Ac. no. 1980/2014) of the Court of Appeal of Kosovo, whereby the legal-property contest concerning the division of the joint property acquired during marriage and alimony of children, these resulting from the legal matter of the divorce of the Applicant on one hand and her spouse on the other hand, was resolved.

The Applicant basically alleges that the factual situation regarding the value of property is determined based on the findings of an expert engaged by the court, and that the regular courts have not taken into account the expertise, according to which the Applicant filed the claim, thereby violating Articles 46 and 54 of the Constitution in the proceedings before the regular courts, due to an incorrect application of the substantive and procedural law.
The Court considered that all the Applicant's arguments, which were relevant to the resolution of the dispute, were properly heard and that they were duly examined by the courts, that the material and legal reasons for the decision he challenges were presented in detail and that, based on the above, the proceedings before the regular courts, viewed in their entirety, were fair. The referral was declared inadmissible as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI116/15
Applicant
Arbenita Ahmeti
Constitutional Review of Judgment Rev. No. 151/2015,
of the Supreme Court of Kosovo, of 19 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Ms. Arbenita Ahmeti from Prishtina (hereinafter: the Applicant), represented by lawyer Xhevat Bici from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment Rev. no. 151/2015 of the Supreme Court, of 19 May 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court of Kosovo. The Applicant considers that in the proceedings before the regular courts his rights were violated, as guaranteed by Articles 46 [Protection of Property] and 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 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 16 September 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 14 October 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 21 October 2015, the Court requested the Applicant to submit the power of attorney, authorizing the lawyer Xhevat Bici to represent her, and it informed the Supreme Court about the registration of the Referral.

8. On 29 October 2015, the Applicant submitted the signed power of attorney.

9. On 10 February 2016, after having reviewed the report of Judge Rapporteur the Review Panel, unanimously, proposed to the Court the inadmissibility of the Referral.

Summary of facts

10. On an unspecified date, the Applicant filed with the Basic Court in Prishtina -branch in Lipjan (hereinafter: the Basic Court) a statement of claim on division of property acquired during marriage.

11. On 28 February 2014, the Basic Court by Judgment C. no. 339/2012) partly approved the Applicant's statement of claim, and in the enacting clause decided as follows:

> *"I. The statement of claim of Claimant Arbenita Ahmeti from Prishtina IS APPROVED AS GROUNDED, and* [the minor child] *is entrusted with custody, care and education to mother-Claimant Arbenita Ahmeti from Prishtina till the change of circumstance according to which it was decided by this Judgment.*
>
> *II. The contact of the minor child with her father, Respondent Xh. P. from Sllovi village, IS DECIDED to be twice per month, every second and fourth Thursday of the month from 13,00 – 15,00 hrs and the second day during the religious and the official holidays as well during the birthday of the child at the corresponding time. In case of no possibility of maintaining the contact according to the aforementioned time scheduled, the same arrangement may be otherwise organized during the time the Respondent is in Kosovo. The contact shall be arranged in the Center for Social Welfare in Prishtina, "Kodra e Trimave" Unit and under the supervision of this center.*
>
> *III. The clarified statement of claim of Claimant Arbenita Ahmeti IS APPROVED, and Respondent Xh. P. from Sllovi village, currently residing in Germany IS OBLIGED to provide alimony for* [minor child]*, to pay the amount of 200€ per month, starting from the day of the trial 28.02.2014, until there are legal conditions for such undertaking and that not later than the 05th of the following month.*
>
> *IV. The part of the statement of claim of Claimant Arbenita Ahmeti, whereby for the alimony she requested that Respondent pays the amount of 100 € per month, IS REJECTED as ungrounded due to the withdrawal of the Respondent from this part of the statement of claim.*
>
> *V/a. The clarified statement of claim of the Claimant IS partially APPROVED, and Respondent Xh. P. is OBLIGED in relation to the Claimant Arbenita Ahmeti for*

personal things that the latter had ownership over the time creating the factual marital marriage which she had for personal use that remained with the Respondent in the event of breaking this marital union, so for that reason the Respondent should reimburse the Claimant the equal amount of money 7858.90. €, with the legal interest from the date of submitting the Claim 09.06.2011 until final payment as well as compensate the costs from the contested procedure in the amount of 1660. €, in term of 15 days from the date the Judgment is received, under the threat of forced execution.

V/b The other part of the statement of claim of the Claimant by which it is requested that the Respondent, Xh. P. for personal items which by the time of establishment the actual marriage were in her possession that served her for personal use and that they remained with the family of the Respondent when terminating this marriage to compensate the equal value of the adjudicated amount 29.093.10.-€ is REJECTED AS UNGROUNDED".

12. The Applicant filed an appeal against items IV and V/b of the enacting clause of the Judgment (C no. 339/2012) of the Basic Court, with the proposal to modify the judgment in the challenged parts and to fully approve the statement of claim, or the same to be annulled and the case be remanded for retrial.

13. The respondent Xh. P. filed an appeal against the items I, II, III and V/a of the enacting clause of Judgment (C. no. 339/2012) of the Basic Court with a proposal to annul the judgment in those parts and to remand the case for retrial or to modify it so that the claimant's statement of claim in the enacting clause under items I, II, III and V/a be rejected in entirety and the enacting clause of judgment under items IV and V/b be upheld.

14. On 3 February 2015 the Court of Appeal of Kosovo, by Judgment (Ac. No. 1980/2014), rejected the appeals filed by the Applicant (the claimant) and by the respondent Xh. P. as ungrounded, and upheld the Judgment (C. no. 339/2012) of the Basic Court with a detailed reasoning of each appealed allegation.

15. The Applicant filed a request for revision against item V/b of the enacting clause of the judgment, by which the statement of claim regarding the personal items was rejected, with the proposal that the challenged part of the judgment be modified, so that the claimant's statement of claim would be approved for the amount of € 29,093.10.

16. On 19 May 2015, the Supreme Court of Kosovo in Prishtina (Judgment Rev. no. 151/2015) rejected as ungrounded the request for revision and upheld the Judgment (Ac. no. 1980/2014) of the Court of Appeal of Kosovo, with a detailed reasoning:

"The Supreme Court of Kosovo, accepted the reasoning of Judgments of the lower instance courts as fair and lawful, as the first instance court in order to determine the factual situation engaged the expert R. R, who based his opinion on the basis of material evidence, proof of witnesses, family visits of claimant and the respondent, made the identification of things and investigated the market regarding the prices, then based on all the data he found that the value of calculated things reaches the amount of 11.227 €. The Supreme Court of Kosovo reviewed the allegations of the claimant in regard to the expertise of Sh. B., but the same didn't have the power to decide differently as the claimant didn't object the expertise of the expert R. R. and neither she requested another expertise, therefore this Court, the allegation for

revision that the substantive law is applied in an erroneous manner, finds as ungrounded…".

Applicant's allegations

17. The Applicant claims that in the proceedings before the regular courts her rights pursuant to Articles 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution have been violated.

18. The Applicant argues: *"… Articles 46 and 54 of the Constitution of Republic of Kosovo are violated, and Arbenita Ahmeti was denied of her right to personal property where for* [minor child] *the right to alimony from the day the parents got separated has not been approved, but only from the day it was decided".*

19. The Applicant also requests *"… To review the legality of the Judgments as there was a violation of the right to personal property, which was solely property of the Claimant, because a part of it is her dowry, golden jewelry and the raiment, which is considered as a special property of the Claimant. Courts have not reviewed the objections of the Claimant to the value of the amount, the expert was assigned by the Court and the early expertise was not considered, and the expertise was not requested by the Claimant but the Court assigned it on its own. The alimony wasn't received from the day when father was obliged to pay, but it was set from the date the Court decided thus, she was damaged for years".*

Assessment of the admissibility of the Referral

20. The Court 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.

21. 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. Furthermore, the Court recalls Rule 36 (2) (b) and d) 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;
    […]

    d) the Applicant does not sufficiently substantiate his claim;"

23. The Applicant basically alleges that the factual situation regarding the value of property is determined based on the findings of an expert engaged by the court, and that the regular courts have not taken into account the expertise, according to which the Applicant filed the

claim, thereby violating Articles 46 and 54 of the Constitution in the proceedings before the regular courts, due to an incorrect application of the substantive and procedural law.

24. The Court notes that the Applicant presented these allegations also in the proceedings upon her request for revision before the Supreme Court. The Supreme Court gave a detailed reasoning on how it determined the factual situation.

25. The Applicant now for the first time in the proceedings before the Constitutional Court alleges that by the decisions of the regular courts "*...the [*minor child] *was denied the right to alimony from the date of separation of her parents, but only from the date it was decided."* These allegations have not previously been subject of dispute in the proceedings before the regular courts.

26. As stated above, the Court finds that the allegations presented by the Applicant are contrary to the documentation submitted by her to the Court.

27. The Court notes that during the proceedings, on the Applicant's proposal, the Court of Appeal granted her an interim measure, which *"obliged the respondent for alimony for the* [minor child] *to pay € 100 every month, whereas for the claimant Arbenita Ahmeti to pay the amount of € 60 until the completion of the procedure by a final decision ...".*

28. The Applicant challenges the way the factual situation was determined, and reasoned by the regular courts in three instances. However, this conclusion was reached by the regular courts, after detailed review of all the arguments presented by the Applicant.

29. The Applicant was given the opportunity at the various stages of the proceedings to present the arguments and evidence she considered relevant to her case. At the same time, she had the opportunity to challenge effectively the arguments and evidence presented by the responding party and to challenge the interpretation of the law, as erroneously interpreted by the Municipal Court, the Court of Appeal and the Supreme Court, in the regular court proceedings.

30. The Court considers that all of the Applicant's arguments, which were relevant to resolve the dispute, were heard properly and that they were duly considered by the courts, that the material and legal reasons for the decision which she challenges were submitted in details and that, following the above, the proceedings before the regular courts, seen as a whole, were fair (see case: *Bogusława KNIAT vs. Poland* ECHR, Decision No. 17064/06, of 11 December 2001.

31. 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).

32. Although the Applicant alleges that her rights were violated by erroneous determination of factual situation and erroneous application of the law by regular courts, she did not indicate how the abovementioned decisions violated her constitutional rights.

33. The Applicant has not proved that the relevant proceedings were in any way unfair or arbitrary (see *mutatis mutandis, Shub v Lithuania*, ECHR Decision on Admissibility No. 17064/06, of 30 June 2009).

34. The Court considers that the admissibility requirements have not been met. The Applicant failed to present and support the claims that the challenged decision violated her constitutional rights and freedoms.

35. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rule 36 (2) (b) and d) 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) and d) of the Rules of Procedure, on 10 February 2016 unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately;

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

KI45/15, Applicant: Elizabeta Arifi-Deliu, constitutional review of Judgment ARJ-UZVP. No. 13/2014 of the Supreme Court of Kosovo of 30 September 2014

KI45/15, resolution on inadmissibility of 8 March 2016, published on 8 April 2016

Keywords: *individual referral, equality before the law, right to fair and impartial trial, judicial protection of rights, manifestly ill-founded.*

On 15 December 2011, the Kosovo Police announced thirty (30) employment vacancies for the position of Administrative Assistant, for which position the Applicant applied. Upon completion of all testing procedures, the Applicant was informed that she was not on the list of thirty (30) candidates selected for the position of the Administrative Assistant.

On 30 September 2014 the Supreme Court of Kosovo (ARJ-UZVP. No. 13/2014) rejected the Applicant's request for extraordinary review as ungrounded.
The Applicant alleged that the Kosovo Police and the regular courts violated the rights guaranteed by the Constitution, namely Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights].
The Court found that all Applicant's arguments which were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the decision she challenges were set out at length; and that, accordingly, the proceedings before the regular courts, viewed in entirety, were fair. The Referral is declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI45/15
Applicant
Elizabeta Arifi-Deliu
Constitutional review of Judgment ARJ-UZVP. No. 13/2014 of the Supreme Court of 30 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Ms. Elizabeta Arifi-Deliu (hereinafter: the Applicant), residing in Prishtina.

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court, ARJ-UZVP. No. 13/2014, of 30 September 2014, by which the Applicant's request for extraordinary review against the Judgment of the Court of Appeal (AA. no. 1/2014 of 25 March 2014) was rejected as ungrounded.

3. The challenged decision was served on the Applicant on 22 December 2014.

Subject Matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which the Applicant alleges that it violated her rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair hearing] of the European Convention on Human Rights (hereinafter: ECHR).

5. In addition, the Applicant requests the assessment of constitutionality of the Decision (No. A 02/175/2012, of 27 July 2012) of the Independent Oversight Board of the Kosovo Civil Service (hereinafter: IOB) and the assessment of constitutionality of the "*Final Ranking of Candidates (the first 30 candidates) dated 20 April 2012 at the Kosovo Police given the composition of the Selection Committee*."

Legal Basis

6. The Referral is based on Article 113 (7) of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 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 April 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 2 June 2015 the President of the Court, by Decision No. GJR. KI45/15, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI45/15, appointed the Review Panel composed of Judges: Almiro Rodrigues (presiding), Ivan Čukalović and Bekim Sejdiu.

9. On 10 June 2015 the Court informed the Applicant of the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court and the IOB.

10. On 10 June 2015 the Court requested from the Basic Court in Pristina to submit a copy of the letter of receipt, which shows when the Applicant was served with the Judgment of the Supreme Court, ARJ-UZVP. No. 13/2014, of 30 September 2014.

11. On 29 June 2015 the Court received the requested letter of receipt from the Basic Court in Pristina indicating that the Applicant was served with the aforementioned Judgment of the Supreme Court on 22 December 2014.

12. On 1 July 2015 by Decision No. K.SH. KI45/15 on replacement of the Judge Rapporteur, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur.

13. On 8 March 2016, 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

14. On 15 December 2011 the Kosovo Police announced thirty (30) employment vacancies for the position of Administrative Assistant, for which position the Applicant applied.

15. Upon completion of all testing procedures, the Applicant was informed that she was not on the list of thirty (30) candidates selected for the position of Administrative Assistant.

16. On 3 May 2012 the Applicant filed a complaint with the Recruitment and Selection Unit of the Kosovo Police (hereinafter: the Recruitment and Selection Unit) for not being on the list.

17. On 18 June 2012 the Recruitment and Selection Unit notified the Applicant that her complaint was rejected as ungrounded.

18. On 6 July 2012 the Applicant appealed to the IOB against the decision of the Recruitment and Selection Unit.

19. In her appeal the Applicant alleged that during the final selection process the commission established for the selection of candidates violated the provisions of the legislation in force concerning civil service recruitment.

20. On 27 July 2012 the IOB (Decision, A. No. 02/175/2012) rejected the Applicant's appeal as ungrounded.

21. The IOB concluded, after reviewing all the evidence submitted by the parties, that the recruitment procedures and the final selection of candidates was conducted in accordance with the Law on Civil Service of Kosovo and Regulation 02/2010 for the procedures on Recruitment in Civil Service.

22. On 7 September 2012 the Applicant filed a claim with the Supreme Court of Kosovo. In her claim, the Applicant alleged that the Recruitment and Selection Unit acted in violation of the Civil Service Law of Kosovo, the Law on Prevention of Conflict of Interest and that during the recruitment procedure she was discriminated against.

23. The Applicant's claim was referred to the Basic Court in Prishtina, Department for Administrative Cases (hereinafter: the Basic Court) following the entry into force of the Law on Courts (1 January 2013) as the competent authority in the administrative procedure to hear the Applicant's claim became the Basic Court instead of the Supreme Court.

24. On 1 July 2013 the Basic Court (Decision, A. No. 1032/12, of 1 July 2013) asked the Applicant for additional evidence.

25. On 9 July 2013 the Applicant provided the Basic Court with the requested supplementation and sought the annulment of the Decision of IOB (A. No. 02/175/2012) and compensation of damages due to prevention of employment.

26. On 10 October 2013 the Basic Court (Judgment A. No. 1032/2012) rejected the Applicant's claim as ungrounded.

27. After reviewing the presented evidence, the Basic Court found that the IOB correctly ascertained the factual situation and applied the provisions of administrative procedure and of the substantive law. In its Judgment, the Basic Court further held that based on the assessment of the Court, the Selection and the Recruitment Unit acted in compliance with the Law and ranked those candidates who had fulfilled the conditions and criteria for the advertised position.

28. On 27 November 2013 the Applicant filed an appeal against the Judgment of the Basic Court (A. no. 1032/2012, of 10 October 2013) alleging violations of the substantive law, incomplete and erroneous assessment of the factual situation, and violations of the procedural provisions.

29. On 25 March 2014 the Court of Appeals of Kosovo (Judgment AA. no. 1/2014) rejected the Applicant's appeal as ungrounded and thereby upheld the Judgment of the Basic Court.

30. After assessing the challenged Judgment and administering the evidence, the Court of Appeals of Kosovo found that the first instance court correctly and completely ascertained

the factual situation. The Court of Appeals of Kosovo further held that it entirely approved the correct and legally grounded stance of the first instance court because the challenged Judgment was not rendered in violation of the provisions of the substantive law or procedural provisions.

31. Whereas as to the Applicant's allegation regarding the incomplete and erroneous assessment of the factual situation, the Court of Appeals held that the first instance court upon the presented evidence proved that the IOB did not act in violation with the Law on Civil Service.

32. On 6 May 2014 the Applicant filed a request for extraordinary review with the Supreme Court of Kosovo. She requested a review of the Judgment of the Court of Appeals of Kosovo (AA. no. 1/2014 of 25 March 2014) alleging violations of the substantive law, incomplete and erroneous ascertainment of the factual situation, and violations of the procedural provisions.

33. The Applicant alleged also that during the recruitment procedure she was discriminated against.

34. On 30 September 2014 the Supreme Court of Kosovo (ARJ-UZVP. no. 13/2014) rejected the Applicant's request for extraordinary review as ungrounded.

35. The Supreme Court found that the lower instance courts decided correctly by rejecting the Applicant's request for annulment of the IOB Decision (A. No. 02/175/2012).

36. The Supreme Court in its Judgment considered that *"the recruitment for the Administrative Assistant has been conducted in compliance with Law No. 03/L-149 on Civil Service, Article 2, paragraph 1, and sub-paragraph 1.3 –based on principle of merit and recruitment procedures in compliance with Regulation No. 02 /2010 on the recruitment procedure. Article 11.1 and Article 18.1 foresee that the admission to the Civil Service is based on the principles of merit, open publication of vacancies, transparency in the process, objectivity and impartiality of the testing 'committee, non - discrimination of candidates and equal representation. The Appellant was ranked in the 49th (forty ninth) position with 71.15% points, whereas candidates who received 71.95% up to 77.95% points were selected, thus the candidates selected who have fulfilled the required criteria".*

37. The Supreme Court concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering lawful decisions.

Applicant's Allegations

38. The Applicant alleges that the Kosovo Police, the IOB and the regular courts violated rights guaranteed by the Constitution, namely Article 7 [Values], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights]. The Applicant further alleges that these public authorities violated her rights guaranteed by the ECHR under Article 6 [Right to a fair trial] and Article 14 [Prohibition of discrimination].

39. Regarding her alleged violations of the Constitution by the regular courts, the Applicant specifies that "*The Supreme Court did not render a reasoned decision, which would demonstrate to me as an appealing party that I have been heard in relation to my complaints* [...]". The Applicant therefore claims that "[...] *the Judgments of the regular courts violated Article 31 [Right to a fair and Impartial Trial in conjunction with Article 6 [Right to a fair trial] of the ECHR*".

40. As to her allegations regarding discrimination, the Applicants claims that she has *"filed appeals with the Courts also due to discrimination as pregnant woman, provided by Article 14 [Prohibition of Discrimination] of the ECHR, on the basis of any other personal status. The employment finalized in June 2012, whereas I gave birth to the child on 28 July 2012. The regular Courts should have treated it in a specific manner the fact that I physically appeared before the Commission, and I earned less points than in the written test, unlike other candidates".*

Admissibility of the Referral

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

42. The Court notes that the Applicant is an authorized party according to the Constitution, challenges an act of a public authority, namely the Judgment of the Supreme Court, has exhausted the necessary legal remedies and has submitted her referral within the four (4) months period after receiving the judgment.

43. The applicant has clearly stated the allegedly violated constitutional rights and freedoms and the challenged act as required by 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".*

44. Further, the Court is to assess whether the Applicant has met the required Rules of Procedure, namely 36 (2), which provide:

> *(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".*

45. The Court notes that in addition to Applicant's request to review the constitutionality of the Judgment of the Supreme Court, the Applicant in her Referral also requests the

assessment of constitutionality of the Decision of the IOB and the Decision on "*Final Ranking of Candidates (the first 30 candidates) dated 20 April 2012 at the Kosovo Police given the composition of the Selection Committee*". In this respect, she alleges violation of Article 24 and Article 31 of the Constitution.

46. The Court notes that the Applicant raised the same allegations concerning violations of the Civil Service Law, Law on Prevention of Conflict of Interest and that she was discriminated against during the administrative proceedings with the first and second instance courts. Her allegations were addressed by the respective courts and reasoned accordingly.

47. In her request for extraordinary review filed with the Supreme Court she alleged violations of substantive and procedural law and erroneous and incomplete ascertainment of the factual situation and that during the recruitment procedure she was discriminated against. Thus, the Court considers that the Judgment of the Supreme Court addressed and decided on aforementioned allegations, which were already raised before the first and second instance courts. Therefore, the Judgment of the Supreme Court is now the final decision on the contested subject matter.

48. In relation to the Applicant's allegation that she was discriminated against, the Basic Court and the Court of Appeal held that the recruitment procedure was held in accordance with the principles of the Civil Service established in the Law on Civil Service. Furthermore, the Supreme Court in its Judgment confirmed that the recruitment procedure was conducted in compliance with the Law in force and that it was based *"on the principles of merit, open publication of vacancies, transparency in the process, objectivity and impartiality of the testing committee, non - discrimination of candidates and equal representation."*

49. The Court holds that the Applicant has not presented any facts nor has she sufficiently substantiated her allegation about discrimination. When alleging such a constitutional violation, the Applicant must present a reasoned allegation and convincing argument.

50. As far as the Applicant's allegation that the regular courts did not render reasoned decisions, the Court refers to the final decision of the Supreme Court, which in its Judgement concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering lawful decision.

51. In addition, she also alleges that Supreme Court did not render a reasoned Decision *"which would demonstrate to me as an appealing party that I have been heard in relation to my complaints [...]."*, thus violating Article 31 of the Constitution and Article 6 of the ECHR.

52. In this relation, the Court notes that the Applicant has not sufficiently substantiated her claim on violation of Article 31 of the Constitution and Article 6 of the ECHR. Furthermore, the Court considers that the Supreme Court in its Judgment addressed the essential issues raised in the Applicant's request for extraordinary review. In this regard, the Court also refers to the jurisprudence of the European Court of Human Rights which held that Article 6 does not require a detailed answer to be provided to every argument put to the court during the course of the proceedings (See case *Van de Hurk v. the Netherlands*, App. No. 16034/90, ECtHR, Judgment 19 April 1994, par. 61)

53. Thus, the Court holds that the reasoning given in the Judgment of the Supreme Court is clear, and after having considered all the proceedings, the Court finds that the 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).

54. In conclusion, the Court emphasizes that it 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).

55. The Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of her constitutional rights and that the Applicant did not sufficiently substantiate her claim.

56. 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 (2) (b) and (d) of the Rules of Procedure, on 8 March 2016, 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

KI147/15, Applicant "SYRI" LLC, Request for Constitutional Review of Judgment E. Rev. no. 10/2015, of the Supreme Court, of 14 October 2015.

KI147/15, Decision on rejection of the Referral, approved on 16 March 2016 and published on 13 April 2016.

Key words: individual referral, right to fair and impartial trial, incomplete and inadmissible referral.

The Applicant contested the Judgment of the Supreme Court and claimed that his rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] have been violated.
In his Referral, the Applicant has not precisely clarified what rights and freedoms have been violated, further on, the Applicant filed the Referral without necessary information in order to enable the Court to consider his referral.
The Court summarily rejected this Referral as inadmissible since it was incomplete for consideration.

DECISION TO REJECT THE REFERRAL
in
Case No. KI147/15
Applicant
"SYRI" LLC
Request for constitutional review of Judgment E. Rev. no. 10/2015, of the Supreme Court of 14 October 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by "SYRI"LLC from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment E. Rev. no. 10/2015, of the Supreme Court, of 14 October 2015, Judgment Ae. no. 126/2013 of the Court of Appeal of Kosovo, of 9 October 2015, and of Judgment C. No. 198/2007, of the Commercial Court in Prishtina, of 19 May 2008.

Subject matter

3. The subject matter of the Referral is the constitutional review of the three Judgments which 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) and Article 6, Article 13 and 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, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 29 and 32 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 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 22 January 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 2 February 2016, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

8. The Court also requested the Applicant to submitt all necessary documents and the decisions challenged by him.

9. The Applicant did not respond to the Court's request.

10. On 16 March 2016, 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. Having reviewed the file in case KI147/15, the Court noted that the Applicant submitted the Referral that is consisted of 2 (two) pages from which cannot be concluded what is the essence of the dispute and how the alleged violations, on which the Applicant has built his Referral, occurred.

12. The Court can only note that the Applicant challenges the following judgments:

    a) Judgment C. No. 198/2007 of the District Commercial Court in Prishtina, of 19 May 2008;
    b) Judgment Ae. No. 126/2013 of the Court of Appeal of Kosovo, of 9 October 2014, and
    c) Judgment E. Rev. no. 10/2015 of the Supreme Court of Kosovo, of 14 October 2015.

Applicant's allegations

13. The Applicant stated in the Referral*: "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".*

14. The Applicant requests: „ *the Court to officially provide all documents from the Basic Court in Prishtina, contained in the case files".*

Admissibility of the Referral

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

16. 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."*

17. 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."*

18. In this Referral, the Court refers to Rule 29 (Filing of Referrals and Replies) of the Rules of Procedure:

> *"(2) The referral shall also include:*
>
> *[...]*
>
> *(g) the procedural and substantive justification of the referral; and*
>
> *(h) the supporting documentation and information."*

19. As well as Rule 32 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules o Procedure, which stipulates:

> *(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."*

20. The Court notes that the Applicant in his Referral of 14 December 2015 explicitly requested the Court to provide *ex-officio* all documents and judgments challenged by him from the Basic Court in Prishtina.

21. The Court further reiterates that despite the request for additional documents sent to the Applicant on 2 February 2016 requesting him to complete his Referral of 14 December 2015 in the proper form with necessary documentation and the challenged judgments challenged by him in the Referral, in order to enable the Court to deal with his Referral, he did not do that.

22. The Court notes that it is the obligation of the Applicant to build a case and to submit all necessary information to the Court so that it could take the case into consideration.

23. Accordingly, the Court concludes that in the present case it cannot consider a referral as all requirements provided by the Rules of Procedure are not met.

24. Therefore, the Referral is to be rejected in accordance with Rules 29 and 32 (5) of the Rules of Procedures, because it is incomplete for review.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Rules 29 and 32 (5) of the Rules of Procedure, in the session held on 16 March 2016, 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 effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Altay Suroy	Arta Rama-Hajrizi

KI110/15, Applicant Bedrije Rrahmani from Prishtina who requests Constitutional Review of Decision E. no. 752/07, of the Municipal Court in Prishtina, of 31 May 2007

KI110/15, Resolution on inadmissibility, of 8 March 2016, published on 13 April 2016.

Key words: individual referral, Constitutional Review of Decision of the Municipal Court in Prishtina, unsubstantiated, manifestly ill-founded.

The Applicant filed the Referral pursuant to Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo.

The Applicant was employed in the Ministry of Labor and Social Welfare.

MLSW assigned the Applicant in the lower position than the one she previously had. The Applicant filed an appeal with the Independent Oversight Board of Kosovo) against the decision of the Appeals Commission of MLSW. IOBK approved the Applicant's appeal, quashed the Decision of the Secretary of MLSW. The Municipal Court in Prishtina, according to the request of the applicant, allowed the execution of the Decision of IOBK.

The Applicant is satisfied with the Decision of the Municipal Court in Prishtina, but she is not satisfied with the way in which this decision was executed, namely the position in which the MLSW assigned her after the execution of Decision. The Applicant highlights in the Referral that the Municipal Court in Prishtina violated the Constitution of the Republic of Kosovo, respectively, Article 49 [Right to work and exercise profession].
The Court is of the opinion that there is no objective basis to support the Applicant's allegations that the challenged Judgment violated her right to work or exercise profession, guaranteed by Article 49 of the Constitution. Indeed, by signing the agreement of 23 February 2009, by which the Applicant is transferred to the new position, the Applicant achieved all the rights stipulated under Article 49 of the Constitution. The Court finds that the Applicant's Referral does not meet the admissibility requirements, given that the Applicant did not substantiate in the Referral that the challenged Decision violated her rights guaranteed by the Constitution or the ECHR. Therefore, the Referral is manifestly ill-founded and shall be declared inadmissible, pursuant to Rule 36 (1) (d) and (2) (b) of Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI110/15
Applicant
Bedrije Rrahmani
Constitutional review of Decision E. no. 752/07, of the Municipal Court in Prishtina, of 31 May 2007
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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Ms. Bedrije Rrahmani residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision E. no. 752/07, of the Municipal Court in Prishtina of 31 May 2007.

3. This decision was served on the Applicant on 24 April 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 49 [Right to Work and Exercise Profession] 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 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 19 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 14 September 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.

8. On 25 September 2015, the Constitutional Court informed the Basic Court in Prishtina that the procedure of the constitutional review of the Decision of the Municipal Court in Prishtina had been initiated. By this notification, the Court requested the Applicant and the Basic Court in Prishtina to submit a copy of the acknowledgment of receipt with the date of receipt of Decision E. no. 752/07 of the Municipal Court in Prishtina, of 31 May 2007.

9. On 1 October 2015, the Basic Court in Prishtina submitted the requested information. In the response of the Basic Court it stated that the Applicant was served with the challenged Decision of the Municipal Court in Prishtina on 24 April 2015.

10. On 8 March 2016, 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. From 2003 until 30 December 2005, the Applicant was employed in the Ministry of Labor and Social Welfare (hereinafter: MLSW) in the position of a therapist- head nurse.

12. On 30 December 2005, the MLSW Secretary [Decision no. 6999] assigned the Applicant in the position of nurse, namely in the lower position than the one she previously had.

13. The Applicant filed an appeal to the Appeals Commission of MLSW against this decision.

14. On 28 February 2006, the Appeals Commission of MLSW, by Decision No. 25/06 rejected the Applicant's appeal and upheld the decision of the Secretary of MLSW.

15. On 22 March 2006, the Applicant filed an appeal with the Independent Oversight Board of Kosovo (hereinafter: the IOBK) against the decision of the Appeals Commission of MLSW.

16. On 24 April 2006, the IOBK by Decision A, 02, 38/2006, approved the Applicant's appeal, annulled the Decision of the Secretary of MLSW and the Decision of the Appeals Commission of MLSW and ordered the MLSW to reinstate the Applicant to her previous position.

17. On 17 May 2007, the Applicant submitted to the Municipal Court in Prishtina a proposal for the execution of the IOBK decision.

18. On 31 May 2007, the Municipal Court in Prishtina, by Decision C. no. 752/07 allowed the execution of the IOBK decision, and thus, re-instated the Applicant to her previous position.

19. On 23 February 2009, the MLSW and the Applicant concluded a contract of employment, by which the Applicant was assigned to a new position which was stated to be equivalent to the previous position and the amount of salary.

20. On 15 July 2011, the Municipal Court in Prishtina sent an order to MLSW to provide the information on the execution of Decision C. no. 752/07 of the Municipal Court in Prishtina.

21. On 18 August 2011, MLSW submitted to the Municipal Court in Prishtina complete documentation regarding the execution of Decision C. no. 752/07 of the Municipal Court in Prishtina. In this notice, the MLSW, among other things, stated:

> *„Based on personal file of the employee Bedrije Rrahmani we inform you that the Decision of M. C. in Prishtina was executed and the position of the employee was changed from Nurse to Therapist for Education and Rehabilitation in the Elderly without Family Support at Nursing Home on 01.02.2009.“*

22. On 10 April 2015, the Applicant submitted the request to the Basic Court in Prishtina for receipt of Decision C. no. 752/07 of 31 May 2007.

23. On 24 April 2015, the Applicant was served with Decision C. no. 752/07, of the Municipal Court in Prishtina.

Applicants' allegations

24. The Applicant considers that by not executing the IOBK Decision A, 02, 38/2006 and Decision C. no. 752/07 of the Municipal Court in Prishtina, the MLSW violated the right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of Kosovo.

Assessment of the admissibility of Referral

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

26. In this respect, Article 113, paragraph 7 of the Constitution stipulates:

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

27. 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.“*

28. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of the Procedures, which provides:

> *(7) "The Court may consider a referral if:*
> *[...]*
> *(d) the referral is prima facie justified or not manifestly ill-founded.*

(8) 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 is satisfied with Decision C. no. 752/07 of the Municipal Court in Prishtina, but she is not satisfied with the way in which this decision was executed, namely the position in which the MLSW assigned her after the execution of Decision C. no. 752/07.

30. The Court also notes that the Applicant built her constitutional complaint on the allegations of violation of Article 49 [Right to Work and Exercise Profession] of the Constitution. Article 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.

31. The Court emphasizes 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 prescribed by the Law. It guarantees a right to work if a person is qualified and if there is available work. It does not guarantee a right to work at or in a specific job position.

32. Having reviewed the case file, the Court found that the IOBK, in accordance with the law, examined the merits of the Applicant's statement of claim, and determined the factual situation, relevant for its decision, including Decision C. No. 752/07 of the Municipal Court in Prishtina, which allows the execution of the IOBK decision.

33. The Court finds that the execution Decision of the Municipal Court, which is challenged by the Applicant, does not in any way prevent her from working or exercising her profession or from receiving personal income provided for the position. Moreover, by signing a contract of employment, of 23 February 2009, the Applicant specifically agreed to be transferred from a job position equivalent to the position and the salary specified in the decision of IOBK, by which the IOBK decision is executed by MLSW.

34. Accordingly, the Court is of the opinion that there is no objective basis to support the Applicant's allegations that the challenged Judgment violated her right to work or exercise profession, guaranteed by Article 49 of the Constitution. Indeed, by signing the agreement of 23 February 2009, the Applicant achieved all the rights stipulated under Article 49 of the Constitution.

35. The Court notes that the Applicant's disagreement with the outcome of the case cannot in itself constitute an arguable claim of a violation of Article 49 of the Constitution (see case *Mezotur-Tiszazugi Tarsulat against Hungary*, no. 5503/02, ECtHR, Judgment of 26 July 2005).

36. The Court further reiterates that under the Constitution 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, 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).

37. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, given that the Applicant did not substantiate in the referral that the challenged Decision violated her rights guaranteed by the Constitution or the ECHR.

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, pursuant to Article 113.1 and 7 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 8 March 2016, 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 effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Arta Rama-Hajrizi

KI87/15, Applicant: Bahrije Galica, constitutional review of Judgment Rev. No. 277/2014 of the Supreme Court of Kosovo, of 20 November 2014

KI87/15, resolution on inadmissibility of 8 March 2016, published on 13 April 2016

Keywords: *individual referral, right to property, out of time.*

On 20 November 2014, the Supreme Court (Judgment Rev. No. 277/2014) completed by final decision the legal labor dispute between the Applicant and Fire- fighting Service of the Municipality of Prishtina.

The Applicant alleged that the Supreme Court has violated her property right, because *"[...] she had a legitimate expectation that she will enjoy [...] compensation based on the right to reinstatement to her working place."*
The Court concluded that the challenged Judgment of the Supreme Court (Rev. No. 277/2014, of 20 November 2014) was served on the Applicant on 2 January 2015, while she submitted her Referral to the Court on 26 June 2015. Based on this, it follows that the Referral was not submitted within the legal time limit provided for in Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
Accordingly, the Court concluded that the Applicant's Referral is inadmissible because it is out of time.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI87/15
Applicant
Bahrije Galica
Constitutional Review of Judgment of the Supreme Court,
Rev. No. 277/2014 of 20 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Ms. Bahrije Galica, represented by Mr. Naim Krasniqi, lawyer in Prishtina.

Challenged decision

2. The challenged decision is Judgment of the Supreme Court, Rev. No. 277/2014, dated 20 November 2014.

3. The Applicant received the challenged Judgment on 2 January 2015.

Subject matter

4. Subject matter is the constitutional review of the above mentioned Judgment of the Supreme Court, which the Applicant alleges violated her right guaranteed by Article 46 [Protection of Property] of the Constitution of Republic of Kosovo (hereinafter: Constitution), as well as Article 1 of Protocol No. 1 of 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, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 26 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. KI87/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision KSH. KI87/15, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

8. On 19 August 2015 the Court notified the Applicant of the registration of the Referral. On the same day, the Court sent a copy of the Referral to the Supreme Court.

9. On 19 August 2015, the Court requested from Basic Court in Prishtina to deliver a letter of receipt which shows when the Applicant was served with the Judgment of the Supreme Court, Rev. no. 277/2014, dated November 2014.

10. On 26 August 2015, the Court received a service note from the Basic Court in Prishtina, which shows that the Applicant, was served with the above mentioned Judgment of the Supreme Court on 2 January 2015.

11. On 8 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

12. The Applicant since year 1983 until 1999, was employed in the fire brigade of the Municipality of Prishtina (hereinafter: the Employer).

13. On 27 September 2007, the Municipal Court in Prishtina obliged the Employer, to return the Applicant to the same job position or to a different position with similar tasks. On 7 December 2007, the Judgment became final.

14. As a result of this Judgment, on 11 February 2008, the Applicant was returned to her working place.

15. On an unspecified date, the Applicant filed a claim with Municipal Court in Prishtina, by which she requested compensation for lost salaries from 1 July 1999 until the date of her return to the working place.

16. On 5 April 2011, the Municipal Court (Judgment, C1. No. 115/08) in Prishtina approved the claim of the Applicant and obliged her Employer to compensate her for the lost salaries for the period from 1 July 1999 until the date of her return to the working place.

17. Against the Judgment of the Municipal Court, the Employer filed an appeal.

18. On 13 June 2014, the Court of Appeal (Judgment, Ac. No. 2517/2012) rejected the appeal of the Employer and upheld the Judgment of the Municipal Court of Prishtina.

19. Against the above mentioned Judgment of the Court of Appeal, the Employer submitted a revision to the Supreme Court.

20. On 20 November 2014, the Supreme Court (Judgment, Rev. No. 277/2014) partially approved as grounded the revision filed by the Employer and amended the Judgment of Court of Appeal and the Judgment of the Municipal Court in Prishtina.

21. By its Judgment, the Supreme Court decided to partially approve as grounded the Applicant's claim, obliging the Employer to compensate her for the lost salaries only for the period from 7 December 2007 until 11 February 2008. At the same time, the Supreme Court rejected as ungrounded the rest of the Applicant's claim for compensation for lost salaries for the period from 1 July 1999 until 7 December 2007.

Applicant's allegations

22. As mentioned above, the Applicant in her referral claims that the Supreme Court has violated her property right.

23. The Applicant claims that *"[...] she had a legitimate expectation that she will enjoy the above mentioned compensation based on the right to return to the working place."*

24. Finally, the Applicant requests from the Court to annul the Judgment of Supreme Court and remand the case for retrial.

Admissibility of the Referral

25. 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.

26. In that 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force".*

27. The Court also takes into account Rule 36 (1) (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 [...]".*

28. In order to determine whether the Applicant has submitted the Referral within the time limit of four (4) months, the Court refers to the day when the Applicant was served with the final decision and the day on which the Referral was submitted to the Constitutional Court.

29. The challenged Judgment of the Supreme Court (Rev. No. 277/2014, dated 20 November 2014) was served on the Applicant on 2 January 2015, while she submitted her Referral to the Court on 26 June 2015. Based on this, it follows that the Referral was not submitted within the legal time limit provided in 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 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).

31. Consequently, the Court considers that the Applicant's referral is inadmissible because it is out of time.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 8 March 2016, 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

KI72/15, Applicant: Selim Hasani, constitutional review of Judgment Rev. No. 51/2015 of the Supreme Court of Kosovo of 2 April 2014

KI72/15, resolution on inadmissibility of 15 March 2016, published on 13 April 2016
Keywords: *individual referral, right to fair and impartial trial, judicial protection of rights, manifestly ill-founded.*

The Basic Court in Prizren (Judgment, C. No. 146/10) rejected the Applicant's claim for annulment of the sale purchase contract and confirmation of co-ownership as ungrounded.

The Supreme Court (Judgment, Rev. No. 51/2015) rejected the Applicant's revision as ungrounded, and found that the lower instance courts based on complete and correct determination of factual situation have correctly applied the procedural law.
The Applicant alleges that the regular courts violated his right to fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. In addition, the Applicant alleges violation of his right to property. However, the Applicant did not present any facts or explained how and why the aforementioned constitutional rights were violated.

The Court found that all Applicant's arguments which were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the decision he challenges were set out at length; and that, accordingly, the proceedings before the regular courts, viewed in entirety, were fair. The Referral is declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI72/15
Applicant
Selim Hasani
Constitutional review of Judgment Rev. No. 51/2015 of the Supreme Court of 2 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Selim Hasani, who is represented by Mr. Zef Delhysa, a lawyer from Prizren.

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. No. 51/2015, of 2 April 2015, by which the Applicant's request for revision against the Judgment of the Court of Appeal (Ac. no. 542/2014 of 17 November 2014) was rejected as ungrounded.

3. The challenged decision was served on the Applicant on 21 May 2015.

Subject Matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which the Applicant alleges that it violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair hearing] of the European Convention on Human Rights (hereinafter: ECHR), and Article 1 of the Protocol No. 1 to the ECHR and Article 17 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 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 5 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 No. GJR. KI72/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI72/15, appointed the Review Panel composed of Judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 18 August 2015 the Court informed the Applicant of the registration of the Referral and requested him to present the power of attorney for representation before the Court. On the same date, the Court sent a copy of the Referral to the Supreme Court.

9. On 23 September 2015, the Applicant submitted to the Court the requested power of attorney.

10. On 15 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

11. The Applicant's father died in 1974. The Applicant was a resident of Albania at that time. On an unspecified date, the Applicant's brother was recognized the sole heir, and immovable properties in village Gërgoc came to be inherited by his brother.

12. Following the death of the Applicant's brother in 1997, an immovable property in Prizren came to be inherited by his spouse and children. After 1999 the Applicant returned to Kosovo.

13. On 19 October 2004, based on inheritance right the Applicant filed a claim with the Municipal Court in Prizren requesting confirmation of ownership over the immovable property in Prizren. The Applicant claimed that this immovable property in Prizren was bought with the money of the sale of immovable properties in village Gërgoc.

14. On 8 November 2004, the Applicant filed a proposal with the Municipal Court in Prizren to impose an interim measure, namely to prohibit the respondent party (the heirs of his deceased brother) to alienate the immovable property until the Municipal Court in Prizren renders a final decision.

15. On 25 January 2005, the Municipal Court in Prizren (Decision, C. No. 1448/04) decided to approve the Applicant's proposal for interim measure.

16. On 24 May 2006, the heirs of the Applicant's brother concluded a sale purchase contract with a third party. This sale purchase contract was confirmed by the Municipal Court in Prizren (Decision, Leg. No. 2502/2006 of 24 May 2006).

17. On 13 July 2006, the Applicant specified his statement of claim by requesting the Municipal Court to annul the aforementioned sale purchase contract concluded between his brother's heirs and the third party (respondent party) and declare the Applicant as a co-owner of the immovable property in Prizren.

18. On 10 September 2013, the Basic Court in Prizren (Judgment, C. No. 146/10) rejected the Applicant's claim for annulment of the sales purchase contract and confirmation of co-ownership as ungrounded. The Basic Court further decided that the interim measure decided by Decision, C. No. 1448/04 of 25 January 2005 remains in force until the decision of the first instance court becomes final.

19. The Basic Court based on the legal provisions in force (Article 138 of the Law on Inheritance) held that: *"[...] he returned from Albania to Kosovo after the war, in mid-1999, meaning that at that moment he learned about "the sale" of the real estate of the deceased [brother], and about the "purchase" of the disputed real estate in Prizren, while the claim was filed before the court at the end of 2004, which means after the expiry of the subjective period of one (1) year. In addition, based on the case file, it follows that the* [Applicant] *and deceased [...] are brothers, namely sons of the deceased [...], who died in 1974, which indicates that in this legal dispute the objective time limit of 10 years is over, respectively the period of 20 years for mala fide possessor, because according to the above legal provisions, the calculation of time limit for requesting the hereditary estate for the* [Applicant] *began to run from the moment of the death of his father [...]."*

20. Whereas as to the sales purchase contract concluded on 24 May 2006, the Basic Court held that the buyer entered into contractual relationship in a *bona fide* way and that *"[...] this dispute cannot bear the consequences of misunderstandings that exist or have existed between the* [Applicant] *and* [the heirs of the Applicant's brother]."

21. In relation to the issue of interim measure, the Court concluded that it is not a duty and obligation of contractual parties to be aware of possible restrictions that may exist on immovable properties. According to the Basic Court the duty and the obligation to respect such restrictions lies on the public authorities, competent for the certification of such contracts.

22. Against the Judgment of the Basic Court in Prizren, the Applicant filed an appeal with the Court of Appeal. In his appeal, the Applicant alleged essential violation of the procedural law, incomplete and erroneous assessment of the factual situation, and erroneous application of the substantive law.

23. On 17 November 2014, the Court of Appeal (Judgment, Ac. No. 542/2014) rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Basic Court in Prishtina.

24. The Court of Appeal held that the allegations of the Applicant raised in his appeal were already addressed by the first instance court, with the result that the Basic Court correctly assessed the factual situation and correctly applied the procedural and substantive law.

25. The Court of Appeal in its Judgement also confirmed that *"The buyer of this* immovable *property is the bona fide buyer and he acquires the property right, if he did not know and did not need to know that the seller is not the owner. The buyer of this immovable property acquired ownership on the basis of a valid legal transaction in a bona fide*

way. In this respect, the appealed allegations appear as irrelevant and ungrounded in this legal matter".

26. Against the Judgment of the Court of Appeal, the Applicant filed revision with the Supreme Court, alleging essential violation of the procedural law, incomplete and erroneous assessment of the factual situation, and erroneous application of the substantive law. In addition, the Applicant raised the issue of the interim measure, for which he alleged that it was still in force.

27. On 2 April 2015, the Supreme Court (Judgment, Rev. No. 51/2015) rejected the Applicant's revision as ungrounded.

28. The Supreme Court found that the lower instance courts based on complete and correct assessment of the factual situation correctly applied the procedural law.

29. As to the application of the substantive law, the Supreme Court based on the provision of the Law on Inheritance confirmed that the Applicant's right to claim inheritance was subject of statutory limitations.

30. Thus, in this relation, the Supreme Court concluded that the lower instance courts also correctly applied the substantive law.

31. As to the Applicant's allegation concerning the issue of interim measure decided by the Municipal Court, the Supreme Court held that the lower instance court correctly applied the provisions on contested procedure, namely that if the court of first instance does not approve the claim, the interim measure remains in force until the decision of the first instance court becomes final.

32. Finally, the Supreme Court concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering lawful decisions.

Applicant's Allegations

33. The Applicant alleges that the regular courts violated his right to fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. In this regard, the Applicant claims that his right for equal trial was denied. In addition, the Applicant alleges violation of his right to property. However, the Applicant did not present any facts or explained how and why the aforementioned constitutional rights were violated.

34. In his Referral, the Applicant the Applicant mainly complains about the erroneous application of substantive law by the regular courts. In addition, he also alleges erroneous assessment of the factual situation. In this regard, he claims that the reasoning of Court of Appeal: "*with respect to the rejection of the appeal regarding the request for annulment of the abovementioned contract* [sale purchase contract], *is even more surprising. Instead of considering that the respondents are 'mala fide', and that they and the court were liable and responsible in terms of 'certification' of unlawful contracts, the second instance court, which is entrusted to ensure the legality and the rule of law, it 'closes eyes' before the unacceptable and unlawful fact, by declaring the buyer 'bona fide' [...].*"

35. The Applicant concludes by requesting the Court to annul the Judgements of the Supreme Court, Court of Appeal and that of the Basic Court in Prizren as unconstitutional and remand the case for retrial.

Admissibility of the Referral

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

37. The Court notes that the Applicant is an authorized party according to the Constitution, challenges an act of a public authority, namely the Judgment of the Supreme Court, has exhausted the necessary legal remedies and has submitted the referral within the four (4) months period.

38. The applicant has clearly stated the allegedly violated constitutional rights and freedoms and the challenged act as required by 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".*

39. Further, the Court is to assess whether the Applicant has met the required Rules of Procedure, namely 36 (2), which provide:

> *(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".*

40. As mentioned above, the Applicant alleges violation of his right to fair and impartial trial and his right to property.

41. In this regard, the Court notes that the Applicant has not presented any facts nor has he substantiated his allegation of violation of his right to fair and impartial trial and his right to property. 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, 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.

43. 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).

44. 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).

45. As mentioned above, the Supreme Court in its Judgment concluded that based on the correct assessment of the factual situation, the procedure and substantive law were correctly applied.

46. In addition, 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 Prizren 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).

47. 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).

48. 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 and that the Applicant did not sufficiently substantiate his claim.

49. 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 (2) (b) and (d) of the Rules of Procedure, on 15 March 2016, 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**
Ivan Čukalović	Arta Rama-Hajrizi

KI09/16 Applicant Behgjet Pacolli, Request for constitutional review of non-implementation of Resolution No. 04-R-02 of the Assembly of the Republic of Kosovo, of 7 April 2011

Case KI09/16, Resolution on Inadmissibility of 17 March 2016, published on 13 April 2016

Keywords. *Right to Fair and Impartial Trial, Right to Legal Remedies, Judicial Protection of Rights of the Constitution, Right to a fair trial, Right to an effective remedy of the European Convention on Human Rights, ratione materiae.*

The Applicant was a signatory to the Memorandum of Understanding with two other political-parliamentary parties to exit the institutional crisis. In the Memorandum of Understanding between the political parties, it was decided to amend the Constitution of the Republic of Kosovo. The Assembly of Kosovo submitted the constitutional amendments to the Constitutional Court requesting their constitutional review.

The Applicant alleged that the failure of the Assembly to adopt these constitutional amendments constitute a violation of human rights guaranteed by the Constitution and the European Convention. The Applicant alleged that the equality before the law was violated to him in the spirit of Article 24 of the Constitution, because in this case the Applicant as the party of the agreement supported by the Resolution has been put in the position of bias and inequality in relation to other entities of the agreement.

The Applicant requested the Court to confirm violation of rights and freedoms of the Applicant and to oblige the Assembly to enforce Resolution, namely to vote the constitutional amendments that regulate the direct election of the President by people.
The Court noted that the Applicant is not an authorized party to file a referral with the Constitutional Court. The Court also decided that the Resolution of the Assembly cannot be subject to constitutional review because it is not compatible *ratione materiae* with its jurisdiction.

The Court found that the Applicant has merely enumerated the constitutional provisions and other international instruments, but he has failed to give reasons as to how such provisions were violated. The Constitutional Court decided to declare the Referral inadmissible as it has been filed by an unauthorized party.

RESOLUTION ON INADMISSIBILITY
in
Case KI09/16
Applicant
Behgjet Pacolli
Request for constitutional review of non-implementation of Resolution No. 04-R-02 of the Assembly of the Republic of Kosovo, of 7 April 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Behgjet Pacolli, an individual person from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant requests constitutional review of non-implementation of Resolution No. 04-R-02 (hereinafter: the Resolution) of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), of 7 April 2011.

Subject matter

3. The subject matter is the constitutional review of non-implementation of the Assembly Resolution of 7 April 2011 with respect to constitutional amendments and necessary legislation for the direct election by the citizens of Kosovo of the President of the Republic of Kosovo.

4. The Resolution in question was adopted by the Assembly in support of a Memorandum of Agreement (hereinafter: the Memorandum) made between Mr. Behgjet Pacolli, Mr. Isa Mustafa and Mr. Hashim Thaçi, on 6 April 2011.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 48 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law).

Proceedings before the Court

6. On 14 January 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 26 January 2016, the Court notified Applicant of the registration of the Referral and sent a copy of the Referral to the Secretariat of the Assembly.

8. On 12 February 2016, the President of the Court appointed Judge Robert Carolan as a Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi (Judges).

9. On 17 March 2016, 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 based on the documents contained in the Referral

10. On 6 April 2011, the Applicant, Mr. Behgjet Pacolli, leader of the political party Aleanca Kosova e Re (AKR), Mr. Isa Mustafa, leader of the political party Lidhja Demokratike e Kosovës (LDK) and Mr. Hashim Thaçi, leader of the political party Partia Demokratike e Kosovës (PDK), signed a Memorandum agreement to exit the institutional crisis created in 2011. In that Memorandum, the three leaders of the political parties agreed to the establishment of an *ad hoc* Committee of the Assembly which would draft the constitutional amendments and the necessary legislation for the direct election of the President of the Republic of Kosovo by the citizens of Kosovo.

11. On 7 April 2011, the Assembly adopted a Resolution endorsing the above described Memorandum.

12. On 22 April 2011, the Assembly adopted Decision No. 04-V-12 on the establishment of the Committee for amending the Constitution of the Republic of Kosovo. This Decision was based also on the Resolution of the Assembly which in that case was not entirely implemented.

13. On 23 March 2012, the President of the Assembly referred the proposed amendments to the Constitutional Court of the Republic of Kosovo, requesting constitutional review of the proposed amendments, namely whether they complied with Chapter II and Chapter III of the Constitution.

14. On 20 July 2012, the Court, in cases KO29/12 and KO48/12, reviewed whether the proposed amendments complied with Chapter II and Chapter III of the Constitution.

15. The proposed constitutional amendments related to the direct election of the President of the Republic were not put up for voting by the Assembly.

Applicant's allegations

16. The Applicant alleges that the Assembly's failure to adopt these proposed amendments is a violation of Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial

Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights] of the Constitution, Article 6 (Right to a fair trial) in conjunction with Article 13 (Right to an effective remedy) European Convention on Human Rights and Article 25 item a) of the International Covenant on Civil and Political Rights and its Protocols.

17. The Applicant alleges: *"the Assembly has not fully enforced Resolution No. 04-R-02, dated 07.04.2011, because it has never put on the agenda to vote the proposed constitutional amendments for direct election of the President, which have been assessed by the Court in Judgment no. K.O.29/12 and KO48/12, dated 20 July 2012. In this case, the Assembly, by failure to act (silence) and non-enforcement of Resolution No. 04-R-02, has violated the alleged constitutional rights of the Applicant".*

18. The Applicant alleges: *"the Assembly, by failing to enforce Resolution No. 04-R-02, did not give deputies the opportunity, especially those of the previous legislature who supported this resolution to vote the proposed constitutional draft amendments for the election of the President of the Republic of Kosovo directly by the people".*

19. The Applicant alleges: "*... the Assembly did not treat him equally to the other political entities and signatories of the agreement, by not enforcing Resolution No. 04-R-02 and the failure to vote the package of amendments for the direct election of the President. The Applicant also states that he has had reasonable expectations that these draft amendments would have been proceeded for voting during this legislature, but also during the previous legislature of the Assembly."*

20. The Applicant alleges: *"The incomplete enforcement of the Resolution and by failing to proceed the proposed amendments for the direct election of the President for voting, his equality before the law as a natural person and the AKR as a legal person has also been violated, in the spirit of Article 24 of the Constitution, because in this case the Applicant, as a party of the agreement supported by the Resolution, has been put in the position of bias and inequality, in relation to the other entities of the agreement supported by Resolution No. 04-R-02, namely Mr. Hashim Thaçi (PDK) and Mr. Isa Mustafa (LDK)".*

21. The Applicant alleges: "*Resolution No. 04-R-02 obliges the Assembly to respect the time limits foreseen in the political agreement, which also includes the amendment to the Constitution concerning the direct election of the President.*"

22. The Applicant claims that there is no legal remedy which he could use to complain against the non-implementation of Resolution No. 04-R-02 within the meaning of Article 144.3 of the Constitution to proceed with the voting of the proposed amendments for the direct election of the President.

23. The Applicant alleges: "*... after the Judgment of the Constitutional Court, Case no. KO29/11, [he] has withdrawn from the post of the President of the Republic of Kosovo in order that the Resolution to be enforced and vote the proposed constitutional amendments for the direct election of the President."*

24. The Applicant claims that in this case the time limits established by the Law cannot be counted as this concerns a "continuing situation" because the Assembly by failing to implement the Resolution has created a "continuing situation". In order to substantiate his claim, the Applicant refers to Case no. KI47/10 *Naim Rrustemi and 31 other deputies,* Judgment of 29 September 2010 (hereinafter: the case of President Sejdiu).

25. The Applicant alleges: *"as a party of the agreement, [he] has had reasonable expectations that the presidential elections of 2016 shall be organized pursuant to the new constitutional rules of the direct election by the people."*

26. Finally, the Applicant requests from the Court "*...to confirm violation of rights and freedoms of the Applicant and to oblige the Assembly to enforce Resolution No. 04-R-02, by enforcing the further procedure of voting the proposed amendments for the direct election of the President, without prejudicing the voting result and by respecting the free mandate of deputies and other constitutional principles.*"

Resolution No. 04-R-02 of the Assembly of the Republic of Kosovo provides:

"The Assembly of the Republic of Kosovo supports the commitments and time limits contained in the Memorandum concerning the need for amending the Constitution of the Republic of Kosovo and the related legislation in order for the President of the Republic of Kosovo to be elected directly by the people. The Assembly supports the time limit contained in the Memorandum, according to which the first presidential elections in Kosovo will be held not later than six months from the date on which the necessary constitutional and legislative amendments enter into force. The Assembly supports the establishment of a committee, led by a deputy of the Assembly identified by the ruling coalition, for this purpose as it is provided in the Memorandum. In accordance with the Memorandum, the Committee shall aim to complete its work within 6-9 months from the date of the establishment."

Assessment of the admissibility

27. The Court first examines whether the Applicant's referral has fulfilled the admissibility requirements set forth in the Constitution and further specified in the Law and the Rules of Procedure.

28. The Court refers to Article 113.1 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

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

29. 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".

30. The Court also takes into account Rule 36 (1) a) of the Rules of Procedure which specifies:

(1) "The Court may consider a referral if:

a) the referral is filed by an authorized party".

31. The Court should first clarify the question of its jurisdiction, that is, to determine whether in the concrete case it is dealing with a procedure provided for by the Constitution and whether the Referral has been filed by an entity authorized by the Constitution to ask for Constitutional review of the question submitted.

32. The number of entities that may challenge actions of the Assembly is limited to those set forth in paragraphs 3 and 5 of Article 113 of the Constitution. Article 113.7 of the Constitution does not allow for an *actio popularis* procedure (For a more detailed elaboration of an *actio popularis procedure,* see Case No. KI117/11, *Ridvan Hoxha,* Resolution on Inadmissibility of 24 July 2012).

33. In this respect, the Court recalls that the European Court of Human Rights regarding the *actio popularis* procedure has held: *"The Court has also underlined that the Convention does not envisage the bringing of an actio popularis for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention."* (See, *Aksu v. Turkey* [Grand Chamber], Application no. 4149/04 and 41029/04, Judgment of 15 March 2012, paragraph 50 and *Burden v. the United Kingdom* [Grand Chamber], Application no. 13378/05, Judgment of 29 April 2008, paragraph 33).

34. In this regard, the Court reiterates the content of paragraphs 3 and 5 of Article 113 of the Constitution:

> *"3. The Assembly of Kosovo, the President of the Republic of Kosovo and the Government are authorized to refer the following matters to the Constitutional Court:*
>
> > *(1)...*
> >
> > *(2) compatibility with the Constitution of a proposed referendum*;
> >
> > *(4) compatibility of a proposed constitutional amendment with binding international agreements ratified under this Constitution and the review of the constitutionality of the procedure followed;*
>
> *5. 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.*"

35. Even if the Applicant were an authorized party, the Court also considers that this omission by the Assembly to put up for voting or non-implementation of the resolution in question usually cannot be subject to constitutional review because it is not compatible *ratione materiae* with its jurisdiction especially seeing that there is no concrete act and procedure to be followed as is established by paragraphs 3 and 5 of the Constitution.

36. The Court also notes that the Applicant has merely enumerated and described constitutional provisions and provisions of other international instruments concerning the right to a fair trial, judicial protection of rights and equality before the law, but he has failed to give reasons as to how such provisions were violated (See Case No. KI109/14, *Ahmet Krasniqi and others,* Resolution of 20 February 2015, paragraphs 35 and 36).

37. Consequently, the Referral has been filed by an unauthorized party and must be declared inadmissible as established by Article 113.1 of the Constitution, provided for by Article 48 of the Law and further specified by Rule 36 (1) a) of Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution, Article 48 of the Law and Rule 36 (1) a) of the Rules of Procedure, on 17 March 2016, 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

KI148/15, Applicant: Xhafer Selmani, Constitutional Review of Decision SCEL-09-0001-C1265 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 11 December 2015

KI148/15, resolution on inadmissibility of 9 March 2016, of 15 April 2016
Key words: *individual referral, right to legal remedies, non-exhaustion of legal remedies*

On 11 December 2015, the Specialized Panel (Decision SCEL-09-0001-C1265) rejected the Applicant's appeal requesting the return to the previous state in order to realize part of 20% of share of proceeds from the privatization of the enterprise, as out of time.

The Applicant addressed to the Court requesting that pursuant to the applicable law, *"I want PAK to pay me the amount of 20% in the sum I am entitled to [...]"*.

The Court further found that the Applicant has not complied with the recommendation on the legal remedy, that he had an effecitve legal remedy at his disposal which he could use before regular courts, whereby the Applicant could have corrected the violation related to his objections; however, the Applicant did not exhaust this effective legal remedy.

The Referral was declared inadmissible because the Applicant had not exhausted all the legal remedies stipulated by the law so that he could have been able to file a referral with the Constitutional Court.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI148/15
Applicant
Xhafer Selmani
Constitutional Review of Decision SCEL-09-0001-C1265 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 11 December 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Xhafer Selmani from village Dumnica e Poshtme, Municipality of Podujeva (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Decision SCEL-09-0001-C1265 of 11 December 2015 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).

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision. The Applicant considers that he *"was discriminated against twice [...] by both Serbs and Albanians"*. However, the Applicant has not mentioned any Article of the Constitution that has 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 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 21 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 22 January 2016, 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.

7. On 16. February 2016, the Court informed the Applicant about the registration of the Referral and requested him to clarify whether he filed any appeal with the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, the Appellate Panel). The Court also informed the Specialized Panel about the registration of the Referral.

8. On 22 February 2016, the Applicant responded to the Court's request and confirmed that he didn't file any appeal with the Appellate Panel.

9. On 9 March 2016, 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. On 7 March 2009, the Privatization Agency of Kosovo (hereinafter: PAK) published the final list of employees entitled to 20% of share of proceeds from the privatization of the SOE Ramiz Sadiku.

11. The deadline for filing the appeals with the Specialized Panel against that final Decision expired on 27 March 2009.

12. On 13 June 2013, the Applicant filed an appeal with the Specialized Panel requesting the return to the previous state.

13. On 11 December 2015, the Specialized Panel (Decision SCEL-09-0001-C1265) rejected the Applicant's appeal as out of time because, in accordance with Article 118.2 of the Law on Contested Procedure 4/77- 1478 of SFRY (applicable pursuant UNMIK Regulation 1999/24), *"...after the expiry of the deadline of 3 (three) months from the determined date, the return to previous state cannot be requested"*.

14. Moreover, the Specialized Panel stated that *"This decision may be appealed within 21 days to the Appellate Panel of the Special Chamber. [...] The foreseen deadline begins to run in the midnight of the same date when the written judgment was served on the appellant"*.

Applicant's allegations

15. The Applicant claims that by the challenged Decision he *"was discriminated against twice [...] by both Serbs and Albanians"*; even though without mentioning any constitutional provisions grounding his claim.

16. The Applicant alleges that *"... from 1979 until 28.02.1990 I was in an employment relationship with SOE "Ramiz Sadiku" ..., where I was... dismissed from work against my will [...]. By doing this, they discriminated me and other Albanian workers in 1999 after the war [...]. I applied several times but to no avail, they did not admit me to work. After the privatization of SOE "Ramiz Sadiku" they did not include me in the register for 20%...."*

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

    "I want PAK to pay me the amount of 20% in the sum I am entitled to [...]".

Admissibility of the Referral

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

19. The Court refers to Article 113.7 of the Constitution, which stipulates:

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

20. The Court mentions also Article 47.2 of the Law, which foresees:

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

21. 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".

22. The Court notes that the Applicant neither appealed the Decision of PAK of 7 March 2009 nor the Decision the Specialized Panel of 11 December 2015, as indicated in the legal remedy of that last Decision.

23. In that respect, the Court recalls that Article 10 of Law No. 04/L-033 on the Special Chamber of the Supreme Court on Privatization Agency Kosovo Related Matters provides:

    "6. A party shall have the right to appeal any Judgment [...] of specialized panel [...] to the appellate panel by submitting to the appellate panel and serving on the other parties its appeal within twenty-one (21) days. [...] The prescribed time limit shall begin to run at midnight on the day [...] specialized panel or court has provided the concerned Decision or Judgment to the parties in writing. The appellate panel shall reject the appeal if the party fails to file within the prescribed time period."

24. The Court further recalls that the Applicant claimed before the Constitutional Court an alleged discrimination against him. However, the Court considers that the alleged discrimination should have been previously raised before the Specialized Panel.

25. In this regard, the Court reiterates that the regular courts are independent in exercising legal powers and it is their constitutional obligation to interpret the issues of fact and law which are relevant to the cases filed before them.

26. The rationale for the exhaustion rule, as in the present case, is to afford 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 constitutional rights. (see Resolution on Inadmissibility, *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo,* Kl41/09, of 21 January 2010, and see *mutatis mutandis,* ECHR, *Selmouni vs. France,* No. 25803/94, Decision of 28 July 1999).

27. The principle of subsidiarity requires that the Applicant exhausts 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 on case KI07/09, *Demë Kurbogaj and Besnik Kurbogaj,* Constitutional review of Judgment Pkl. no. 61/07, of 24 December 2008, para. 18).

28. Accordingly, the Constitutional Court cannot assess as a rule the alleged constitutional violations, without previously providing the opportunity to regular courts to finalize the proceedings filed before them.

29. Therefore, the Court finds that the Applicant has not exhausted all legal remedies provided by law as a requirement to submit his Referral, therefore, the Referral is rejected as inadmissible, in accordance with Article 113.7 of the Constitution and Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 47 of the Law, and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 9 March 2016, 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**

Almiro Rodrigues Arta Rama-Hajrizi

KI59/15, Applicant: Ljutfi Kačka, constitutional review of Judgment P. no. 78/12, of the Basic Court in Prizren-Branch in Dragash, of 25 June 2013

KI 59/15, resolution on inadmissibility of 15 March 2016, published on 15 April 2016

Keywords: *individual referral, right to fair and impartial trial, right to legal remedy, protection of property, judicial protection of rights, non-exhaustion of legal remedies.*

The Applicant alleged that the Basic Court violated his right to appeal, because it did not serve on him a copy of the judgment. The Applicant further alleges that the abovementioned Judgment was served only on his lawyer, who had not informed him in time about the Judgment of the Basic Court, and as a result of his failure to appeal in time, the Judgment of the Basic Court became final.

The Court referred to the case law of the European Court of Human Rights, which concluded that *"a state cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes*."

The Court concluded that based on the fact that against the Judgment the Basic Court no appeal was filed, the Court finds that the Applicant has not exhausted effective legal remedies. The Referral is declared inadmissible because the Applicant did not exhaust all legal remedies provided by the law.

RESOLUTION ON INADMISSIBILIT
in
Case No. KI59/15
Applicant
Ljutfi Kačka
Constitutional review of Judgment P. no. 78/12, of the Basic Court in Prizren, of 25 June 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Ljutfi Kačka from village Restelica, Municipality of Dragash (hereinafter: the Applicant), who is represented by Mr. Rexhep Kabashi, a lawyer in Prizren.

2. The challenged decision is Judgment P. no. 78/12, of the Basic Court in Prizren, Branch in Dragash (hereinafter: the Basic Court) of 25 June 2013.

3. The challenged Judgment was served on the Applicant on an unspecified date.

Subject matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Basic Court, which allegedly violated the Applicant's rights as guaranteed by 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 of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] and Article 13 [Right to an effective remedy] of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 7 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 56 of

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

Proceedings before the Constituional Court

6. On 12 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 29 June 2016, the President of the Court, by Decision GJR. KI59/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI59/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

8. On 14 August 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 Basic Court.

9. On 18 August 2015, the Applicant submitted to the Court the additional documents.

10. On 1 September 2015, the Applicant submitted again to the Court the additional documents.

11. On 15 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

12. On 25 June 2013, the Basic Court in Prizren (Judgment P. No. 78/12) in the contested procedure approved the claim of three claimants and confirmed that the latter are the co-owners of an immovable property in the village of Restelica.

13. By this Judgment, the Applicant, who in these proceedings was in a capacity of a respondent, was obliged to recognize the Applicants' right of ownership.

14. The Applicant authorized a lawyer to represent him in the proceedings before the Basic Court and other courts.

15. Against the Judgment of the Basic Court (Judgment P. No. 78/12, of 25 June 2013), the Applicant did not file the appeal. As a result, the Judgment became final.

16. Based on the case file, on an unspecified date the Applicant filed a request for protection of legality with the Office of the Chief State Prosecutor against the abovementioned Judgment of the Basic Court.

17. On 8 August 2014, the Office of the Chief State Prosecutor (Notification KMLC. No. 70/14) through its lawyer informed the Applicant that it had found no legal basis for filing a request for protection of legality against the final judgment of the Basic Court in Prizren.

18. On 23 January 2015, the Applicant against the aforementioned lawyer filed a request for initiation of disciplinary proceedings with the Disciplinary Counsel of the Chamber of Advocates.

19. On 23 January 2015, the Applicant against the aforementioned Judgment of the Basic Court filed again a request for protection of legality with the Chief State Prosecutor's Office. In his request for protection of legality, the Applicant claimed that his lawyer who he had authorized to represent him in the aforementioned contested matter missed the deadline for submitting the request.

20. In his request for protection of legality, alleging violation of the essential provisions of contested procedure and erroneous application of the substantive law, the Applicant requested that the Judgment of the Basic Court be annulled and the case be remanded to the first instance court for retrial. In addition, the Applicant in his request claims that he was denied the right to a fair trial as the lawyer authorized by him, missed the deadline for appeal, and therefore he had lost the right to property.

21. On 28 January 2015, the Office of the Chief State Prosecutor (Notification KMLC No. 70/14) informed the Applicant that *"[...] carefully read this second submission (considered as a proposal for filing the request for protection of legality), and found that there is no legal basis to file against the above mentioned judgment the request for protection of legality, and in this respect, has remained completely with the act of the Office of KMLC. no. 70/14, of 05.08.2014"*.

22. On 28 May 2015, the Disciplinary Panel of Kosovo Chamber of Advocates by Decision, R. DK-No.17-3 / 15 declared responsible the aforementioned lawyer for disciplinary violation in the exercise of his duty as a lawyer and sentenced him to a certain monetary fine.

23. Based on the case file submitted by the Applicant on 18 August 2015, the Basic Prosecutor's Office in Prizren against the same lawyer filed indictment on the grounds that the lawyer in the exercise of his duties as an authorized representative, by not filing appeal against the judgment of Basic Court did not fulfill his official duties, and, therefore, deliberately violated the rights of another person.

Applicant's Allegations

24. As mentioned above, the Applicant in his Referral alleges that the Basic Court in Prizren had violated his rights to a fair trial, the right to remedy and the right to property as guaranteed by the Constitution, UDHR and the ECHR.

25. The Applicant further alleges violation of the right to appeal by the Basic Court on the grounds that this Court did not personally submit a copy of the challenged judgment.

26. Finally, the Applicant requests the Court to annul the Judgment of the Basic Court of 25 June 2013 and the case be remanded to the first instance court for retrial.

Admissibility of the Referral

27. The Court first examines whether the Referral meets the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure.

28. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

29. 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".*

30. Furthermore, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which states that:

> *"(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".*

31. The Court notes that the challenged judgment is the decision of the first instance in the proceedings before the Basic Court and against it was allowed appeal, which would be reviewed by the Court of Appeal.

32. Based on the case file, the Court notes that no appeal was filed against the Judgment of the Basic Court.

33. In this regard, the Applicant alleges that the Basic Court violated the right to appeal on the grounds that this Court did not serve on him a copy of the judgment. The Applicant further alleges that the abovementioned Judgment was served only on his lawyer, who had not informed him in time about the Judgment of the Basic Court and as a result of his failure to appeal in time, the Judgment of the Basic Court became final.

34. In this case, the Court notes that the Applicant authorized the aforementioned lawyer to represent him in the proceedings before the Basic Court and other courts. The Court considers that the procedural actions taken by the legal representative of the party, under the power of attorney, are considered to be the party's own actions. In this case, such actions also include the receipt of the court decisions (see case KI46/13, KI47/13, KI48/13 and KI68/13, Applicant *Naim Morina, Bukurije Drançolli, Avdi Imeri and Genc Shala*, the Constitutional Court, Resolution on Inadmissibility of 5 July 2013).

35. Furthermore, the Court refers to the case law of the European Court of Human Rights, which concluded that "*a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes" (*See *Kamasinski v. Austria*, No. 9783/82, ECHR, Judgment of 19 December 1989, A. no. 168). In analogous fashion, the Court considers that public authorities cannot be held responsible for the actions of the lawyer, moreover when the lawyer is authorized by the party itself, in this case the Applicant.

36. Therefore, based on the fact that against the Judgment the Basic Court no appeal was filed, the Court finds that the Applicant has not exhausted effective legal remedies.

37. The Court reiterates that the principle of subsidiarity requires that before addressing the Constitutional Court, the Applicants should exhaust all procedural possibilities in the

regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violations of rights guaranteed by 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 (See case *Selmouni v. France*, ECHR, no. 25803/94, Judgment of the Constitutional Court, of 30 October 2010).

38. Accordingly, the Court considers that the Applicant's Referral is inadmissible, 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, 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, on 15 March 2016, 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

KI 17/16, Applicant, Holding Company Inex Interexport a.d. - Constitutional review of the Final Decision No. 10/50 of the Government of the Republic of Kosovo, of 23 September 2015 and Preliminary Decision No. 06/195 of the Government of the Republic of Kosovo, of 3 September 2014

KI 17/16, Resolution on Inadmissibility of 17 March 2016 published on 15 April 2016

Key words: *Individual Referral, non-exhaustion of remedies, right to fair trial, interim measures*

The subject matter is the constitutional review of the challenged decisions referred to above. The Government of the Republic of Kosovo issued the challenged decisions whereby it approved the expropriation of immovable properties from owners of a certain area for the purposes of construction of the Brezovica tourist centre.

The Applicant then filed a Referral with the Constitutional Court alleging that the Government of the Republic of Kosovo, through its decisions, violated the Applicants' rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to a Legal Remedy], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo. The Applicant also requested from the Constitutional Court to impose an interim measure, namely to suspend the legal effects of the Preliminary and Final Decision of the Government of the Republic of Kosovo.

The Constitutional Court declared the Referral inadmissible because the Applicant did not exhaust any of the available legal remedies. The Constitutional Court noted that the Applicant has neither appealed the Preliminary Decision nor has it appealed the Final Decision of the Government of the Republic of Kosovo, despite the fact that both of these decisions could have been appealed according to the law in force and the guidance on the right to appeal given by both Decisions.

Considering that the Applicant has not shown a *prima facie* case on the admissibility of the Referral, the Constitutional Court also rejected the Applicant's request for interim measures.

RESOLUTION ON INADMISSIBILITY
In
Case No. KI17/16
Applicant
Holding Company Fond Inex Interexport a.d.
Constitutional review of Final Decision No. 10/50 of the Government of the Republic of Kosovo, of 23 September 2015
and
Preliminary Decision No. 06/195 of the Government of the Republic of Kosovo, of 3 September 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was filed by Holding Company Fond Inex Interexport a.d., with seat in Belgrade, Serbia (hereinafter, the Applicant). The Applicant is represented by Mr. Marko Ketler, a lawyer from Ljubljana, Slovenia. The latter has authorized nine other lawyers to substitute him, namely Mr. Dragan Karanović, Mr. Dejan Nikolić, Mr. Milan Lazić, Mr. Nemanja Ilić, Ms. Senka Mihaj, Mr. Marko Milanović, Mr. Ognjen Bozović and Ms. Milica Savić, from Belgrade, Serbia and Mr. Veton Qoku, lawyer from Skopje, Macedonia.

Challenged Decision

2. The Applicant challenges the Final Decision No. 10/50 of the Government of the Republic of Kosovo, of 23 September 2015 (hereinafter, the Final Decision) and the Preliminary Decision No. 06/195 of the Government of the Republic of Kosovo, of 3 September 2014 (hereinafter, the Preliminary Decision). Both decisions are related to the expropriation procedure for the purpose of constructing the Brezovica tourist centre.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged decisions, which allegedly violated the rights guaranteed by 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] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

4. In addition, the Applicant requests the Court to impose an interim measure, namely "*to suspend the legal effect of the Preliminary and Final decision, until the date of rendering of final decision by the Constitutional court*".

Legal Basis

5. The Referral is based on Article 21 (4) and 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 29 and 54 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 22 January 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court), through postal services.

7. On 12 February 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Bekim Sejdiu.

8. On 19 February 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of it to the Government of the Republic of Kosovo (hereinafter, the Government).

9. On 17 March 2016, the Court deliberated on the case and decided to declare the Referral inadmissible and to reject the request for interim measures.

Summary of facts

10. On 3 September 2014, the Government issued the Preliminary Decision approving the expropriation of immovable property from the owners referred to in the tables attached to the Preliminary Decision. The Preliminary Decision namely reads:

> *"1. Approved the expropriation in the public interest of the immovable property of the owner and holder of interest, related to construction of the Brezovica tourist centre [...]*
> *5. Against this decision or any of its part, the requesting subject, each person who is the owner or the holder of an interest over the immovable property referred to in this decision is entitled to appeal within thirty (30) calendar days with the competent court".*

11. The Applicant has not shown that it appealed the Preliminary Decision of the Government.

12. On 23 September 2015, the Government issued the Final Decision approving the expropriation of the immovable property as tabulated. The Final Decision reads:

> *"[…] 4. Integral part of this decision are the evaluating acts and tables in which are set out the amounts of compensation for those owners or holders of interest, property rights or legitimate interests to whom are affected by the expropriation process.*
> *5. Against this decision the subjects have right to appeal within thirty (30) calendar days to the competent court, only to challenge the amount of compensation specified in this decision […]".*

13. The Applicant has not shown that it appealed the Final Decision of the Government.

Applicant's allegations

14. The Applicant claims that the challenged decisions of Government have violated its rights guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution.

15. In general, the Applicant alleges that the Preliminary and Final Decisions of the Government are *"illegal"* considering that the requirements provided by Article 4 of the Law on Expropriation have not been met and that the Government failed to explain how did it consider that such criteria were met.

16. The Applicant also claims that the challenged decisions *"present an obvious example of discrimination on the basis of ethnicity"* and that the *"final goal of expropriation is discrimination against Serbian nationals and companies"*. As a result, the Applicant alleges that the Government violated its right to equality guaranteed by Article 24 of the Constitution.

17. The Applicant further claims that the Government has failed to inform the Applicant and other owners about the intention to perform the expropriation. As a result, the Applicant alleges that the Government violated its right to fair and impartial trial guaranteed by Article 31 of the Constitution.

18. Moreover, the Applicant claims that it had *"no available legal remedies to challenge the legality and legitimacy of the expropriation"* because *"some of its assets […] were not even included in the Preliminary Decision (although they are included in the Final Decision)"*. As a result, the Applicant alleges that the Government violated its right to legal remedies as guaranteed by Article 32 of the Constitution.

19. The Applicant still claims that, in connection with its right to legal remedies, the Government has also violated its right to judicial protection as protected by Article 54 of the Constitution by *"depriving its right to challenge the legitimacy of the subject expropriation"*.

20. Finally, the Applicant claims that the Government *"breached expropriation procedures, arbitrarily depriving the Submitter* [Applicant] *of his property."* In that respect, the Applicant alleges that the Government failed to identify it *"as owner of the property subject to expropriation"*. As a result, the Applicant alleges that the Government violated its right to protection of property as guaranteed by Article 46 of the Constitution.

21. Furthermore, the Applicant requests the Court *"to render a Decision on Interim Measures and suspend any implementation of the Preliminary and Final Decisions, until the Constitutional Court renders a final decision on this referral"*.

Admissibility of the Referral

22. The Court recalls that the Applicant challenges the Preliminary Decision (No. 06/195, of 3 September 2014) and the Final Decision (No. 10/50, of 23 September 2015) of the Government which decided to expropriate a number of immovable properties for the purpose of constructing the Brezovica tourist centre.

23. The Applicant alleges that the Government has violated its rights to equality before the law; to protection from discrimination; to fair and impartial trial; to an effective legal remedy; to judicial protection of rights and to protection of property as guaranteed by the Constitution.

24. The Court first assesses whether the admissibility criteria as requested by the Constitution, the Law and Rules of Procedure have been met.

25. In this respect, the Court refers to paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

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

26. The Court also refers to Article 47 [Individual Requests] which provides:

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

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

    (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 [...]".

28. The Court notes that the Applicant has neither appealed the Preliminary Decision nor has it appealed the Final Decision of the Government, even though both of these decisions could have been appealed according to the law in force and the guidance on the right to appeal given by both Decisions.

29. More specifically, the Court notes that the Preliminary Decision could have been appealed by the Applicant in respect of the *"legitimacy of the proposed expropriation",* which is mainly what the Applicant claims for the first time before the Constitutional Court. The Preliminary Decision provided a thirty (30) calendar days for the *"owners or holders of interests"* to challenge the whole decision or any part of it.

30. In this respect, the Court also notes that the Applicant, either as an owner or as a holder of interest, could have raised before the Supreme Court its allegations of a violation of its constitutional rights; but it has not availed from that legal remedy provided by law. Even if the Applicant was not recognized as "*owner"* of certain assets which it alleges to be its

property, it could have raised these arguments as a *"holder of an interest"* considering that the law provided for such a possibility.

31. In fact, the Court recalls that the Applicant claims that some of its assets were part of the Final Decision without being part of the Preliminary Decision. For that reason, the Applicant complains that it was denied an effective legal remedy and judicial protection of rights.

32. Moreover, the Court notes that the Final Decision could also have been appealed by the Applicant. Similarly, the Final Decision provided another thirty (30) calendar days for appeals to be filed whilst limiting the scope of the appeal only to compensation with respect to the immovable property which was to be expropriated. However, despite this limitation, the Applicant could have raised before the Supreme Court its allegation of a breach of his right to an effective legal remedy and judicial protection of rights and ensure that the principle of subsidiarity is respected by providing the Supreme Court with the opportunity to put right the alleged violations of the Constitution. The Applicant has not availed from this legal remedy either.

33. The Court notes that the facts described above show that, despite the opportunities presented by the law in force, the Applicant did not avail from any opportunity to challenge before the Supreme Court the legitimacy of the expropriation, either as an alleged owner or as an interest holder. The Applicant is raising these allegations for the first time before the Constitutional Court without having exhausted any of the available legal remedies.

34. The Court recalls that the Applicant has not shown that it appealed either the Preliminary or the Final Decisions of the Government. Despite this, the Applicant claims that its right to effective legal remedies and judicial protection of rights has been violated without even having tried to raise these alleged constitutional violations before the Supreme Court, which has exclusive jurisdiction to review expropriation procedures in cases where the Government is an expropriating authority.

35. The Court reiterates that it can only decide on the admissibility of a Referral, if the Applicant shows that it has exhausted all effective legal remedies available under applicable law.

36. The Court further reiterates that a remedy available under applicable law cannot be considered as ineffective without the Applicant even trying to exhaust it and see whether it produces any results.

37. The Court recalls that the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right.

38. The rationale for the exhaustion rule is to afford the authorities concerned, in this case the Supreme Court, 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 subsidiarity character of the Constitution. (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the*

Republic of Kosovo, KI 41/09, of 21 January 2010, and see mutatis mutandis, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

39. In fact, as a general rule, the Constitutional Court will only intervene where there are infringements of the interpretation of the Constitution or the laws do not comply with the Constitution, but only after exhaustion of all legal remedies provided by law.

40. Therefore, the Referral, according to Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 (1) (b) of the Rules of Procedure, is inadmissible.

Request for Interim Measure

41. The Court recalls that the Applicant requested the Court to impose an interim measure, namely to suspend the legal effect of the challenged decisions, until the Constitutional Court renders a decision in respect of its Referral.

42. The Applicant alleges that the approval of the interim measure would be in public interest since *"illegal expropriation by the Government of Kosovo threatens the rule of law, ethnic minority rights, and economic and social stability."*

43. In order for the Court to decide on an interim measure, pursuant to Rule 55 (4) a) and (5) of the Rules of Procedure, it is necessary that:

> *"(4). [...]*
> *(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;*
> *[...]*
> *(5). If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."*

44. As emphasized above, the Applicant has not shown a *prima facie* case on the admissibility of the referral. Therefore, the request for interim measure is rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution; Article 47 of the Law; and Rule 36 (1) b), 55 (4) a) and (5), and 56 (3) and (5) of the Rules of Procedure, on 17 March 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measure;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Arta Rama-Hajrizi

KI40/15, Applicant, Fatlume Meta - Constitutional review of the Judgment of the Court of Appeal, P. nr. 35/10, dated 4 April 2011

KI 40/15, Resolution on Inadmissibility of 6 July 2015 published on 19 April 2016

Key words: *Individual Referral, incomplete Referral, summarily reject, interim-measures*

The Applicant was found guilty of committing a criminal offence and was sentenced to one (1) year imprisonment. Later on, the Municipal Court in Prishtina issued an order whereby the Applicant was asked to start serving the imprisonment sentence. Following this order, the Applicant wrote letters to the Municipal Court in Prishtina, Kosovo Judicial Council and the Ministry of Justice, requesting that they postpone the serving of the imprisonment sentence.

The Applicant filed a Referral with the Constitutional Court, challenging the abovementioned Judgment of the Court of Appeal and requesting from the Court to issue a decision on interim measures. The Applicant did not submit the challenged decision nor did she refer to any rights or freedoms guaranteed by the Constitution. Instead, she claimed that there has been a violation of Article 20 of the Law on Execution of Penal Sanctions because her request for the postponement of the execution of the imprisonment sentence was not approved.

The Constitutional Court summarily rejected the Referral because the Applicant did not complete her Referral. She did not submit any decisions of the regular courts nor did she submit any evidence or supporting documents, even after the Constitutional Court asked her to supplement the Referral. Considering that the Applicant has not shown a *prima facie* case on the admissibility of the Referral, the Constitutional Court also rejected the Applicant's request for interim measures.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI40/15
Applicant
Fatlume Meta
Constitutional Review of the Judgment of the Court of Appeal,
P. nr. 35/10, of 4 April 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 Referral was submitted by Ms. Fatlume Meta, from Magure, municipality of Lipjan (hereinafter, the Applicant). She is represented by Mr. Safet Krasniqi who is also from Magure, municipality of Lipjan.

Challenged Decision

2. The Applicant challenges the Judgment (P. nr. 35/10, dated 4 April 2011) of the Court of Appeal which she has not submitted to the Court. She claims to have received on 12 March 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision which allegedly has violated Article 20 [Postponement of execution of sentences of imprisonment] of the Law No. 04/L-149 on Execution of Penal Sanctions (hereinafter, the Law on Execution of Penal Sanctions).

4. The Applicant does not refer to any rights or freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) that might have been violated.

5. The Applicant also requests from the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely to postpone the serving of the sentence in prison.

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 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

7. On 30 March 2015, the Applicant submitted the Referral to the Court.

8. On 2 April 2015, the Applicant submitted a power of attorney for Mr. Safet Krasniqi whereby she authorized him to represent her before the Court. On the same date, the Applicant submitted an additional letter where she requested from the Court to impose an interim measure.

9. On 4 April 2015 the President by Decision No. GJR. KI40/15 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date the President by Decision No. KSH. KI40/15 appointed the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

10. On 10 April 2015 the Applicant submitted another letter to the Court requesting from the latter to *"[...] postpone the serving of her sentence, to impose a more lenient sanction or to replace it with a conditional sentence."*

11. On 14 April 2015 the Court notified the Applicant of the registration of the Referral and requested that she submits the challenged decision and other relevant documents to the Court.

12. On 14 May 2015 the Court sent another letter to the Applicant whereby it informed her that in case she does not submit the requested documents within a deadline of seven (7) days from the receipt of this letter, the Court will continue the procedure based on the existing case file.

13. On 1 June 2015 the Applicant replied to the letter sent by the Court but did not submit the requested documents. Instead, the Applicant submitted a medical report of her child.

14. In order to verify the Applicant's allegations about the date of service of the challenged Judgment, the Court requested the Basic Court in Prishtina to submit evidence indicating when the challenged Judgment has been served on the Applicant.

15. The Municipal Court in Prishtina responded at the request of the Court, but did not send the documentation of the decision, but only the return receipt of another decision which is not challenged by the Applicant, and that does not exist in the file case.

16. On 6 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

17. The Applicant was accused for committing a criminal offense, was found guilty and was sentenced to one (1) year imprisonment.

18. On 12 March 2015, the Municipal Court in Prishtina (ED. no. 51/2012) issued an order based on which the Applicant was asked to start serving the imprisonment sentence.

19. On 20 March 2015, the Applicant sent a letter to the Municipal Court in Prishtina whereby she requested to postpone the serving of the imprisonment sentence.

20. On 23 March 2015, the Applicant sent another letter to the Kosovo Judicial Council, requesting from it to postpone the serving of the imprisonment sentence for an unspecified period of time.

21. On 26 March 2015, the Applicant sent a similar letter to the Ministry of Justice, Directorate for Prisons, with the same request, namely *"to postpone the serving of her imprisonment sentence until her child increases in age."*

Applicant's allegations

22. The Applicant does not refer to any right guaranteed by the Constitution which might have been violated. She only claims that there has been a violation of Article 20 of the Law on Execution of Penal Sanctions.

23. In regards to this claim, the Applicant states that the Municipal Court in Prishtina has violated procedural requirements provided by Article 20 of the Law on Execution of Penal Sanctions because the latter foresees that *"the execution of the sanction must be postponed until the child is 3 years old and my child [...] is only 2 years old."*

24. Finally, the Applicant concludes by requesting the following from the Court:

> *"[...] to postpone the serving of my sentence for a certain period of time until my child [...] and my other children have increased in age."*

Assessment of the admissibility of the Referral

25. 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.

26. In this respect, 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 [...]."

27. In addition, 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 [...]."

28. The Court recalls that the Applicant alleges that the regular courts violated her right guaranteed Article 20 of the Law on Execution of Penal Sanctions by not approving her request to postpone the serving of the imprisonment sentence.

29. The Court also recalls that the Applicant has not alleged any violation of the rights guaranteed by the Constitution which might have been violated.

30. Pursuant to Article 22.4 of the Law, the Court requested the Applicant to submit the challenged decision and other decisions of the regular courts.

31. However, within the prescribed time limit, the Court has not received any decision of the regular courts.

32. The Court considers that it cannot take into account the Applicant's allegations without the supporting documents and material evidence, in accordance with Article 22.5 and 48 of the Law and Rules 29 (2) (h) and 32 (5) of the Rules of Procedure.

33. The Court further considers that the Applicant has not shown a *prima facie* case, in order for the Court to assess the fulfillment of all procedural requirements on admissibility.

34. In addition, the Court emphasizes that it is not a fact-finding court and the burden of proof lies with the Applicant who failed to meet the procedural requirements laid down in the Constitution, the Law and the Rules of Procedure.

35. In sum, the Court considers that the Applicant's Referral does not meet the procedural requirements for further consideration due to non-completion of her Referral with the relevant documents, as required by Articles 22.4 and 48 of the Law and Rule 29 (2) (h) of the Rules of Procedure.

36. Therefore, the Court concludes that Referral is to be summarily rejected and thus is inadmissible.

Assessment of the Request for Interim Measure

37. The Applicant also requests from the Court to impose an interim measure, namely "*to postpone the serving of the imprisonment sentence until her children increase in age.*"

38. In this connection, the Court notes that the Applicant has not submitted the challenged decision or any other decision of the regular courts and has not provided any evidence as to why the interim measure should be granted.

39. Therefore, the Court considers that the request for interim measure is not applicable since it does not meet the requirements set forth by the Law and Rules of Procedure.

40. In order for the Court to allow an interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it needs to determine that:

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

41. As concluded above, the Referral is inadmissible and, therefore, there is no *prima facie* case for imposing an interim measure. For these reasons, the request for an interim measure is to be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 27 and 48 of the Law and Rules 29 (2) (h) 32 (5), 55 (4) and 56 (b) of the Rules of Procedure, in the session held on 06 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

KI163/15, Applicant Božidarka Banović, Request for Constitutional Review of Decision Ac. no. 3575/13, of the Court of Appeals, of 19 October 2015.

KI163/15, Resolution on inadmissibility approved on 9 March 2016 and published on 25 April 2016.

Key words: individual referral, right to fair and impartial trial, protection of property, manifestly ill-founded referral.

The Applicant requested from the Constitutional Court the constitutional review of Decision of the Court of Appeal, of 19 October 2015, which allegedly violated the rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo because the Court did not provide equal protection of the property right of the Applicant, because it did not assess the circumstances and facts according to the applicable law and as a consequence she requested the annulment of the Decision of the Court of Appeal.

The Court considered that the Applicant has not substantiated her allegations, nor she has submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution.

The Court ascertained that the Applicant's Referral does not meet the admissibility requirements, because the Applicant has not substantiated that the challenged decision violates her rights guaranteed by the Constitution or the ECHR. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY

in
Case No. KI163/15
Applicant
Božidarka Banović
Request for constitutional review of Decision Ac. no. 3575/13 of the Court of Appeal, of 19 October 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Ms. Božidarka Banović from Prishtina (hereinafter: the Applicant), who is represented by Mr. Naser Peci, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Decision Ac. no. 3575/13 of the Court of Appeal, of 19 October 2015.

Subject Matter

3. The subject matter of the Referral is the constitutional review of Decision of the Court of Appeal on 19 October 2015, which allegedly violated the rights and freedoms 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).

Legal Basis

4. Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 31 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 January 2016, the President of the Court, by Decision GJR. KI163/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI163/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 8 February 2015, the Court informed the Applicant and the Court of Appeal about the registration of the Referral.

8. On 9 March 2016, 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. The Applicant and M. A. are co-owners of the property consisting of cadastral parcel no. 4368/2, with a surface area of 04.74 ha, and the joint residential facility that is constructed on the said cadastral parcel, of storey P+2+Pk, and a garage.

10. On 27 June 2011, the Applicant submitted her proposal to the Basic Court in Prishtina, by which she requested the division of the property and of the use of the property with the co-owner M. A.

11. On 4 September 2013, the Basic Court rendered Decision [N. no. 185/2011], which determined that the joint property of the co-owners be divided in the following way: *„The Applicant will use the ground floor and the first floor of the house and will use cadastral parcel no. 4368/2, the part from the main road. The second co-owner M.A will use the second floor and the attic of the house and will use cadastral parcel no. 4368/2, the part from the western side“.*

12. In the conclusion of the Decision of the Basic Court is stated: *„The Court, taking into consideration the statement of the authorized person of the Proposer and the authorized person of the Counter-proposer, sketches and opinions of the construction expert and the geodesy expert, and taking care for special and joint interests of the parties, decided as in the enacting clause of this decision.....“*

13. Both co-owners of the property filed appeals with the Court of Appeal against the Decision of the Basic Court, through their lawyers, alleging erroneous determination of factual situation and essential violation of the provisions of the non-contentious procedure.

14. On 19 October 2015, the Court of Appeal rendered Decision [Ac. no. 3575/2013], which rejected the appeals of the representative of the proposer [i.e. the Applicant] and of the counter-proposer and upheld the decision of the Basic Court in Prishtina [N. no. 185/2011] of 4 September 2013.

15. In the reasoning of the Decision of the Court of Appeal is stated: *„The Court of Appeal considered the appealed allegations of the authorized representative of the Proposer and*

of the authorized representative of the Counter-proposer and found that they are ungrounded due to the fact that if the interested parties do not reach agreement, the first instance court administers the necessary evidence and based on the result of the entire proceedings it shall render a decision whereby it regulates the way of administration and use of the joint property, taking care for their special and joint interests in terms of Article 191.1 of the Law on Non-Contentious Procedure " (hereinafter: the LNCP).

Relevant law

Law no. 03/ L-007 on Non- Contentious Procedure

Article 193

"193.1 If the interested person does not agree the court will obtain the necessary evidence and according to the results of all the procedure will draw the act judgment with which will regulate the way of administration and exploitation of the common thing according to the respective provisions of the material right, attentively for their special and common interests.

193.2 If according to the proposal is required the arrangement of the common apartment's exploitation or of the business premises, the court especially will arrange which spaces the interested persons will exploit separately and which in common, and how it will be paid the exploitation of the spaces."

Applicant's allegations

16. The Applicant claims in the Referral:*"The Proposer considers that the Right to Fair and Impartial Trial (Article 31) and the Protection of Property (Article 46) have been violated, because the Court did not provide equal protection of the property right of the Proposer, because it did not assess the evidence in accordance with Article 193 of LNCP".*

17. The Applicant addresses the Court with the request: „*To annul Decision Ac. no. 3575/13, dated 19.10.2015".*

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 fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

19. In this respect, Article 113, paragraph 7 of the Constitution stipulates:

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

20. Article 48 of the Law also provides:

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

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

> *(9) "The Court may consider a referral if:*
> *[...]*
> *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(10) 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, by analyzing the arguments of the Applicant in terms of violation of the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: the ECHR), notes that the Applicant has built her constitutional complaint on the allegations that: "*the rights guaranteed by the Constitution were violated because the regular courts rendered decisions in violation of Article 193 of LNCP, because they did not assess all circumstances, facts and evidence".*

23. In the present case, the Court notes that the Court of Appeal dealt with these allegations of the Applicant in the challenged Decision, providing specific and clear responses, namely that,"*the conclusion of the first instance court is entirely approved also by this court, this due to the fact that the Proposer and the Counter-proposer are co-owners of the parcel in question and that the construction expert gave his expert report regarding the best functionality of the house..." [...] taking into account also the expert report of the geodesy expert regarding the field factual situation and taking into account the special and joint interests of the parties, this court also considers that it has been decided correctly..."*

24. As to the allegation that the regular courts have not assessed all the evidence, the Court recalls that the assessment of evidence is the competence provided by the law, which have the regular courts, with an obligation to reason that assessment clearly and properly. The Court notes that the challenged decision of the Court of Appeal contains all the necessary reasons on which it is based, in accordance with the requirements of Article 31 of the Constitution and Article 6 ECHR.

25. Moreover, the Court notes that the Court of Appeal provided a specific explanation on the application of the relevant legal provisions of Article 193 of the LNCP, which application according to the Applicant's allegation resulted in violation:

> *„... if the interested parties do not reach agreement, the first instance court administers the necessary evidence and based on the result of the entire proceedings it shall render a decision whereby it regulates the way of administration and use of the joint property, taking care for their special and joint interests..."*

26. As to the allegation of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court recalls that the fairness of a proceeding is assessed on the basis of the proceedings as a whole (European Court of Human Rights, *Barbera, Messegue and Jabardo against Spain*, Judgment of 6 December 1988, nos. 10588/83,

10589/83, 10590/83, paragraph 68). A flaw in one stage of the proceedings, including suspicion of erroneous assessment of the evidence and the application of the substantive law, a party may challenge at the next stage of the regular court procedure, which the Applicant did when she challenged the decision of the Basic Court to the Court of Appeal.

27. Having assessed the reasons for the constitutional complaint in relation to the violation of the rights under Article 46 of the Constitution and Article 1 of Protocol 1 of the ECHR, the Court finds them as ungrounded. The mere fact that the division of joint ownership of property has not been made according to the Applicant's expectations in the way that she specified in the proposal to the Basic Court, and which she considers legitimate, does not of itself constitute a valid basis to justify the allegations of violation.

28. According to the case law of the European Court of Human Rights, pursuant to Article 1 of Protocol 1, only the existing possessions are protected, but not the right to acquire property in the future. The legitimate expectation of any "property", "asset" or "compensation", according to this view must be based on a legal provision or a legal act, which has a valid legal basis and that affects the property rights (*Peter Gratzinger and Eva Gratzingerova v. the Czech Republic Republic*, Decision of the European Court of 10 July 2002, no. 39794/98, § 69).

29. The Court emphasizes 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 the Constitution (see *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005

30. The Court considers that the Applicant has not substantiated her allegations, nor she has submitted any *prima facie* evidence indicating a violation of the 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).

31. The Constitutional Court further reiterates that it is not its duty 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 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*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

32. Finally, 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 or the ECHR.

33. Accordingly, 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, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 9 March 2016, 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 effective immediately;

Judge Rapporteur	**President of the Constitutional Court**
Bekim Sejdiu	Arta Rama-Hajrizi

KI134/15, Applicant Ibrahim Alabaki, Constitutional review of Judgment GSK-KPA-A-229/ 2013 of the Appeals Panel of the Supreme Court of Kosovo of 29 September 2015

KI134/15 Resolution on Inadmissibility rendered on 16 mars 2016 and published on 25 April 2016

Keywords*: Individual referral, property right, manifestly ill-founded.*

By KPCC by Decision KPCC/D/R/197/2013 held that R.I. has verified her property right with regard to the contested property, and that R.I. enjoyed the right of possession of the property in question, and that, whoever had usurped that property must now release it within 30 (thirty) days from the day the decision is served.

The Applicant did not agree with the PAK Decision and decided to file a complaint with the Appeals Panel. The Applicant claimed among other that he has legal rights over the contested property and backed up his allegations by providing, *inter alia*, written statements by third parties testifying that RI sold the property to the Applicant in June 1999 and a bill on who made payment of taxes on the property.

The Appeals Panel by Judgment GSK-KPA-A-229/2013 rejected the Applicant's complaint as ungrounded and upheld the decision of the KPCC, which did not approve the Applicant's allegation that he has legal rights over the contested property, because the Applicant did not provide sufficient and valid evidence to prove ownership over the contested property.

The Court found that the Appeals Panel replied to all crucial allegations put forth by the Applicant regarding the applicability of the law. The Court noted that the issues on the veracity and assessment of evidence and the statute of limitations are questions of legality, and do not fall within the realm of constitutionality. The Referral was declared as manifestly ill-founded

RESOLUTION ON INADMISSIBILITY
in
Case no. KI134/15
Applicant
Ibrahim Alabaki
Constitutional Review of Judgment GSK-KPA-A-229/2013 of the Appeals Panel of the Supreme Court of Kosovo of 29 September 2015
THE CONSITUTIONAL 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Ibrahim Alabaki from Pozharan (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment GSK-KPA-A-229/2013 of the Appeals Panel of the Supreme Court of Kosovo (hereinafter, the Appeals Panel) of 29 September 2015 in connection with Decision KPCC/D/R/197/2013 of the Kosovo Property Claims Commission (hereinafter, the KPCC) of 18 April 2013.

Subject Matter

3. Subject matter is the constitutional review of the Judgment GSK-KPA-A-229/2013 of the Appeals Panel of 29 September 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 Rule of Procedure).

Proceedings before the Constitutional Court

5. On 5 November 2015, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 December 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of judges Altay Suroy, Snezhana Botusharova and Bekim Sejdiu.

7. On 6 January 2016, the Applicant was notified about the registration of the referral and a copy was sent to the Kosovo Property Agency (hereinafter, the KPA) and the Appeals Panel respectively.

8. On 16 March 2016, 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. From the documents contained in the referral it transpires that in June 1999 a third party, RI, had entrusted to the Applicant the responsibility, in her absence, of care-taking of her residential property (apartment) in Pozharan. Subsequently, both the Applicant and RI claimed property rights over the property in question.

10. On 13 February 2007, RI filed a property claim with the KPA requesting verification of her property right and re-possession of the residential property (apartment) in Pozharan. RI alleged that she had lost possession of the claimed property as a result of circumstances in years 1998/1999 and backed up her claim by providing, *inter alia*, a copy of the purchase contract, copy of decision on inheritance and written statements of third parties.

11. On 22 June 2007, the Applicant was notified about the claim and there was a finding that he had usurped the property in question.

12. On 22 July 2007, the Applicant claimed legal rights over the contested property and backed up his allegations by providing, *inter alia*, written statements by third parties testifying that RI sold the property to the Applicant in June 1999 and a bill on who made payment of taxes on the property.

13. On 18 April 2013, the KPCC by Decision KPCC/D/R/197/2013 held that RI has verified her property right with regard to the contested property, that RI enjoyed the right of possession of the property in question, and that, whomever had usurped that property must now release it within 30 (thirty) days from the day the decision is served. The KPCC reasoned that RI had substantiated her allegations by providing namely the purchase contract and the decision on inheritance while the Applicant had not produced any documentary evidence to support his claim of ownership of the property.

14. On 19 August 2013, the Applicant filed a complaint with the Appeals Panel. The Applicant alleged, *inter alia*, that KPCC decision is in contravention with the applicable law in Kosovo, that RI had expressed her will to sell the property to him, that evidence adduced by RI is fictitious and that RI is barred by statutory limitations to make a claim on the contested property.

15. On 29 September 2015, the Appeals Panel by Judgment GSK-KPA-A-229/2013 rejected the Applicant's complaint as ungrounded and upheld the decision of the KPCC. The Appeals Panel adopted the holding of the KPCC and reasoned, *inter alia*, that RI filed her property claim within the Statute of Limitations, that the purchase contract and the decision on inheritance produced as evidence by RI are valid, that the Applicant did not provide sufficient and valid evidence to prove ownership over the contested property.

Applicant's Allegations

16. The Applicant alleges violation of Article 46[Protection of Property] of the Constitution.

17. The Applicant alleges that: "*the violation of the property right of the Claimant by the Supreme Court of Kosovo as a fundamental right is expressed in the fact that in the reasoning presented by the Supreme Court, among others, it presents reasons which are completely in contradiction with the material pieces of evidence in this case*".

18. Furthermore, the Applicant alleges that: "*As a first instance Decision (of KPA), as well as the Decision of the Supreme Court of Kosovo – of the second instance, do not contain complete legal reasons for the contested issue of the litigants, and are not decisions based on merit which have been described in detail in the paragraph above*".

19. Finally, the Applicant asks the Court: "*we hereby propose to the Court that due to the violation of the property right and possession right by the Supreme Court of Kosovo, this Claim be granted, by which it is assessed that Judgment GJSK – KPA – A – 229 – 2013 of the Supreme Court of Kosovo is unlawful, and is annulled as such. The case is remanded for retrial to the Supreme Court of Kosovo (now the Basic Court in Prishtina – Department for Administrative Cases)*".

Assessment of admissibility

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

21. In this respect, the Court refers to Article 113.7 of the Constitution which provides:

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

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

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

23. The Court 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".

24. In the Applicant's case, the Court notes that the Appeals Panel replied to all crucial allegations put forth by the Applicant by clearly explaining the questions of veracity of evidence, applicability of the law with regard to the evidence adduced by the opposing parties and whether a property claim is time-barred by virtue of the Statute of Limitations. Thus, this Court considers that the Applicant's allegations on contradictive and unreasoned decisions by the Appeals Panel and the KPCC are untenable.

25. The Court considers that allegations of the Applicant namely on the veracity of evidence and the Statute of Limitations are questions of legality which were sufficiently addressed by the Appeal Panel, and as such, do not fall within the realm of constitutionality.

26. In this regard, the Court considers that the Applicant merely refers to a violation of the right to property without explaining accurately how that occurred as is required by Article 48 of the Law.

27. 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).

28. Moreover, the Referral does not indicate that the Appeals Panel and the KPCC 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, 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).

29. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 46 [Protection of Property] guaranteed by the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary,* No. 5503/02, ECtHR, Judgment of 26 July 2005).

30. Bearing in mind all of the foregoing, the Court considers that the presented facts do not justify the allegation of a violation of rights guaranteed by the Constitution.

31. Consequently, the Referral, on a constitutional basis, is manifestly ill-founded and must be declared inadmissible pursuant to Article 48 of the Law and 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 16 March 2016, 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

KI119/15, Applicant Borka Stevanović from Belgrade who requests Constitutional Review of Judgment P. no. 47/015, of the Municipal Court in Peja-Branch in Istog, of 21 July 2015

KI119/15, Resolution on inadmissibility, of 9 March 2016, published on 27 April 2016.

Key words: individual referral, constitutional review of Judgment of the Municipal Court in Peja – Branch in Istog, interim measure, request to not disclose identity, premature.

The Applicant filed the referral pursuant to Article 113.7 and 21.4 of the Constitution of the Republic of Kosovo, Article 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo and Rules 54 and 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

The Basic Court in Peja - Branch in Istog after the conducted procedure for the confirmation of the right to ownership, rendered Judgment which determined that the Applicant and all the legal heirs of the first rank of inheritance are entitled to 1/6 of the two contested cadastral parcels.

The Applicant claims that due to the lack of advice on legal remedy in the challenged Judgment of the Basic Court in Peja - Branch in Istog, were violated her rights to file a complaint and consequently the rights guaranteed by Constitution. Further on, the Applicant requests the Court to impose interim measure and suspend the execution of Judgment of the Basic Court in Peja - Branch in Istog, and that her identity be not disclosed.

The Court confirms that in order for the Applicant to be exempted from the requirement to exhaust all legal remedies it is incumbent on her to show that the legal remedy was in fact used, that the legal remedy was inadequate and ineffective in relation to her case, and there existed special circumstances exempting 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 exempt from exhaustion of all legal remedies to her avail. Accordingly, the Court holds that the Applicant's Referral is premature, due to non-exhaustion of all available legal remedies. As it was concluded above, the referral is inadmissible and consequently the request for interim measure shall be dismissed.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI119/15
Applicant
Borka Stevanović
Constitutional review of Judgment P. no. 47/015, of the Basic Court in Peja-Branch in Istog, of 21 July 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Ms. Borka Stevanović residing in Belgrade (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Judgment P. no. 47/015 of the Basic Court in Peja-Branch in Istog, of 21 July 2015.

3. This Judgment was served on the Applicant on 22 August 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated Articles 32 [Right to Legal Remedies] and 102.5 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

5. At the same time, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: Court) to impose interim measure and suspend the execution of the challenged decision, and that her identity be not disclosed.

Legal basis

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

Proceedings before the Court

7. On 14 December 2015, the Applicant submitted the Referral to the Court.

8. On 6 November 2015, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

9. On 19 November 2015, the Court informed the Applicant about the registration of the Referral and requested from her to fill and submit the official form of the Constitutional Court. On the same date, the Court informed the Basic Court in Peja-Branch in Istog about the registration of the Referral.

10. On 14 December 2015, the Applicant submitted the official form of the Constitutional Court.

11. On 9 March 2016, 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. After the death of the Applicant's father, the legal heirs initiated before the Basic Court in Peja, Branch in Istog-the procedure for confirmation of ownership over two cadastral parcels no. 00730/1 and no. 00730/2, which is an inheritance from their deceased father.

13. On 21 July 2015, the Basic Court in Peja-Branch in Istog after the conducted procedure rendered Judgment [P. no. 47/015] which determined that all the legal heirs of the first rank of inheritance are entitled to 1/6 of the cadastral parcels no. 00730/1 and no. 00730/2.

Applicant's allegations

14. The Applicant claims that due to lack of guide on the right to file a complaint in Judgment P. no. 47/015 of the Basic Court in Peja-Branch in Istog, were violated her rights guaranteed by Articles 32 [Right to Legal Remedies] and 102.5 [General Principles of the Judicial System] of the Constitution of Kosovo.

15. The Applicant requests the Court to impose interim measure and suspend the execution of Judgment P. no. 47/015 of the Basic Court in Peja-Branch in Istog, and that her identity be not disclosed.

16. The Applicant also requests from the Court that her identity be not disclosed.

Relevant legal provisions

Law on Contested Procedure
2009/03-L-006

ISSUANCE, DRAFTING AND SENDING THE CHARGESHEET

[...]

Article 160
160.1 A verdict compiled in written should have: [...] guide on the right to file a complaint against the verdict.

[...]

Reasons on which the verdict could be strike

Article 182

[...]

n) if the decision has leaks due to which it' can't be examined, especially if the disposition of the decision is not understandable or contradictory in itself with the reasoning of the verdict, or when the verdict has no reason or which gives no justification for the final facts, or which reasoning are unclear, contradictory, or if in the final facts there are contradictions between what is said in the verdict, the main document or the procedural records and of the document or the minutes of proceeding;

[...].

Procedure according to the complaint

Article 185

The complaint will be presented to the court that issued the decision of the first degree in a satisfactory number for the court and opposing party.

Admissibility of Referral

17. 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.

18. 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."*

19. The Court also refers to Article 47. 2 of the Law, which foresees:

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

20. Furthermore, the Court takes into account 36 (1) (b) of the Rules of Procedure, which provides 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".*

21. In that regard, the Court recalls that the Applicant alleges that due to the lack of guide on the right to file a complaint in the challenged judgment of the Basic Court in Peja-Branch in Istog, she was denied the right to appeal, and consequently, the rights guaranteed by the Constitution.

22. The Court notes that the Applicant has not submitted appeal or requests correction of the decision to the court that issued the challenged decision as stipulated in the Law on Contested Procedure.

23. In this regard, the Court notes that the Applicant did not exhaust adequate legal remedies that were available and, therefore, failed to comply with the forms prescribed by the applicable law in Kosovo. In addition, the Court also notes that the Applicant did not do everything that could reasonably be expected of her to exhaust legal remedies *(D.H. and Others v. the Czech Republic,* No. 57325/00, ECHR judgment of November 2007, paragraph 116).

24. The Court considers that in order for the Applicant to be exempted from the requirement to exhaust all legal remedies it is incumbent on her to show that the legal remedy was in fact used, that the legal remedy was inadequate and ineffective in relation to her case, and there existed special circumstances exempting 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 exempt from exhaustion of all legal remedies to her avail.

25. The Court further recalls that the principle of subsidiarity requires that the Applicant exhausts all legal remedies provided by law.

26. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo 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 Kl41/09, *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo,* of 21 January 2010, and see *mutatis mutandis,* ECHR, *Selmouni vs. France,* No. 25803/94, Decision of 28 July 1999).

27. Accordingly, the Court holds that the Applicant's 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.

28. Therefore, it follows that the Referral is inadmissible.

Request for Interim Measure

29. The Court notes that the Applicant requested the Court to impose interim measure, and suspend the execution of Judgment P. no. 47/015 of the Basic Court in Peja–Branch in Istog, until a decision on the merits is rendered.

30. In order to approve the request for interim measure, in accordance with Rule 55 (4 and 5) of the Rules of Procedure, the Court must determine that:

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

31. As previously concluded, the Referral is inadmissible and, therefore, the request for interim measure should be rejected.

Request to not disclose identity

32. Regarding the request for not disclosing her identity, the Applicant requested the approval of such a request without stating explanations and exceptional reasons for such a request.

33. However, the Court rejects the request as ungrounded because the Applicant did not explain nor substantiated by supporting documents the merits of her request.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to 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 9 March 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT as ungrounded the request for interim measure;

III. TO REJECT as ungrounded the request for not disclosing identity;

IV. TO NOTIFY this Decision to the Parties;

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

VI. TO DECLARE this Decision effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Arta Rama-Hajrizi

KI30/15, Applicants: Isa Nuza, Naxharije Polloshka, Naxhije Lleshi-Nuza, who request constitutional review of Judgment AC-II-12-0047,

Of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 11 December 2014

KI30/15, Resolution on Inadmissibility, of 6 July 2015, published on 4 May 2016.

Key words: individual referral, constitutional review of Judgment of the Appellate Panel of the Special Chamber, interim measure, ungrounded, manifestly ill-founded.

The Applicants submitted the Referral pursuant to Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

On 8 September 1958, the legal predecessor of the Applicants, the late N.N. from Gjakova, in the capacity of donor, concluded a contract of gift [Ov. no. 458/58], by which she gave 8 (eight) parcels of land with a total surface area of 9,705 ha, to the Agricultural Cooperative in Gjakova, in the capacity of recipient.

The Appellate Panel of SCSC rendered Judgment [AC-II- 12-0047], by which it rejected the Applicants' appeal as ungrounded.

The Applicants allege: "*that the courts have erroneously determined the factual situation and applied the wrong Article of the Law, therefore the judgments of the Municipal Court in Gjakova [C. no. 94/071 of 6 March 2009 and of the Appellate Panel of the Supreme Court [AC.II.-12-0047], of 11 December 2014 are unconstitutional.*"

The Court notes that the explanation given by the Appellate Panel of SCSC in Judgment [AC-II-12-0047], of 11 December 2014, as a competent court, is clear and legally substantiated, and that the proceeding before the Municipal Court has not been unfair or arbitrary. The Court, as stated above, determines that there is no *prima facie* case for granting the Interim Measure, and the Referral is inadmissible

RESOLUTION ON INADMISSIBILITY
in
Case No. KI30/15
Applicant
Isa Nuza
Naxharije Polloshka
Naxhije Lleshi-Nuza
Request for Constitutional Review of Judgment AC-II-12-0047, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 11 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 is submitted by Isa Nuza, Naxharije Polloshka and Naxhie Lleshi-Nuza all with residence in Gjakova (hereinafter: the Applicants) represented by Mr. Avni Q. Vula, a lawyer.

Challenged decision

2. The Applicants request the constitutional review of Judgment [AC-II-12-0047], 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 SCSC), of 11 December 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment [AC-II-12-0047] of the Appellate Panel of SCSC, of 11 December 2014, which allegedly violated the Applicant's constitutionally guaranteed rights and freedoms under Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

4. At the same time, the Applicants request the Court to impose an Interim Measure by which the liquidation proceedings of the immovable property, which is the subject of this constitutional complaint, would be suspended until the Court has completed its assessment of the constitutionality of the challenged Judgment.

Legal basis

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

Proceedings before the Court

6. On 10 March 2015, the Applicants submitted the Referral to the Court.

7. On 14 April 2015, the President of the Court by Decision no. GJR. KI30/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI30/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 20 April 2015, the Court informed the Applicants and the Appellate Panel of SCSC about the registration of the Referral.

9. On 1 July 2015, by Decision no. GJR. KI30/15, the President appointed Judge Arta Rama-Hajrizi as member of the Review Panel instead of judge Enver Hasani whose mandate ended on 26 June 2015.

10. On 6 July 2015, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 8 September 1958, the legal predecessor of the Applicants, the late N.N. from Gjakova, in the capacity of donor, concluded a contract of gift [Ov. no. 458/58], by which she gave 8 (eight) parcels of land with a total surface area of 9,705 ha, to the Agricultural Cooperative in Gjakova, in the capacity of recipient.

12. On 6 September 2006, the Applicants filed a claim with the Special Chamber of the Supreme Court, for the issues related to the Kosovo Agency on Privatization (hereinafter: KAP), by which they requested that the contract on gift of immovable property [Ov. no. 458/58] of 8 September 1958, concluded between N.N. as the legal predecessor of the Applicants and the Socially Owned Enterprise Erenik (hereinafter: SOE Erenik) as legal successor to the Agricultural Cooperative in Gjakova, is declared null and void in its entirety.

13. On 31 January 2007, the Special Chamber rendered Decision [no. SCC-06-0393] by which the Applicants' claim was forwarded to the Municipal Court in Gjakova for adjudication.

14. On 6 March 2009, the Municipal Court in Gjakova rendered Judgment [C. no. 94/07], by which it rejected the Applicants' statement of claim with the reasoning that:

"[...]

The property right is acquired by adverse possession after expiration of 20 years, pursuant to Article 28 paragraph 4 of the Law on Basic Property Relations. By Article 20 paragraph 1 of the same Law is provided that the property right can be acquired by law itself, based on legal affairs and by inheritance. The respondent's legal successor acquired the property right through valid legal transactions, entered into possession and changes were made in cadastral books…

In addition to this, based on Article 268 of the Law on Associated Labor, according to which it is provided that if the immovable property was placed under social ownership without legal basis, the claim to restitute that property can be made within 5 years, starting from that day of becoming aware of it, but no later than 10 years. In this matter, the restitution of immovable property was not requested within the said time limits, and due to expiry of deadlines the ownership right of the claimants (Applicants) cannot be certified."

15. On 22 June 2009, the Applicants filed an appeal with the Special Chamber, by which they requested the annulment of the Judgment of the Municipal Court in Gjakova [C. no. 94/07], of 6 March 2009, and the approval of the statement claim, of 6 September 2006.

16. On 17 September 2014, the Appellate Panel SCSC after the procedure of determining the legal status of the respondent rendered decision [AC-I-14-0102], by which the Company "Erenik" from Gjakova was recognized the status of a Socially Owned Enterprise (hereinafter: SOE) and by which it was determined *"that in this procedure the Appellate Panel of the Supreme Court has jurisdiction, since the respondent as SOE can be qualified as a responding party in the proceedings before the Special Chamber of the Supreme Court based on Article 5.2 of the LCP."*

17. On 2 December 2014, the Applicants filed a claim with the Special Chamber, in which they requested the acceleration of the proceedings and the imposition of an interim measure to suspend the liquidation of the challenged property.

18. On 11 December 2014, the Appellate Panel of SCSC rendered Judgment [AC-II-12-0047], by which it rejected the Applicants' appeal as ungrounded. The Appellate Panel reasoned that: "*[…] Article 8a of the Law on Amendments and Supplements of the Law on transfer of immovable property of 1987 of the Republic of Serbia, which may be referred when claiming annulment of contract alleged to have been entered under threat, violence or fraud, is also inapplicable for this case. Although this law was at some time applicable in Kosovo, pursuant to Article 296 of the Law on Property and other Real Rights, promulgated by the Assembly of Republic of Kosovo, it is no longer applicable because this Article expressively defines that:* ***'By the entering into force of this law, all provisions of the previous laws that have regulated this field shall have no effect, unless the law otherwise provides'.***

19. In the conclusion of the Judgment, the Appellate Panel of SCSC rejected as ungrounded the Applicant's request for an interim measure, regarding the ban on liquidation of the disputed property, with the reasoning that: "*there is no law on restitution of immovable property to former owners in Kosovo, therefore there is no legal ground to claim the restitution of land to the former owners, or to annul the contracts entered and certified by the courts before 1 October 1978, when the LOR entered into force. For this reason, the first instance court correctly rejected as ungrounded the Applicant's claim".*

Applicant's allegations

20. The Applicants allege: „*that the courts have erroneously determined the factual situation and applied the wrong Article of the Law, therefore the judgments of the Municipal Court in Gjakova [C-no. 94/07] of 6 March 2009, and of the Appellate Panel of the Supreme Court [AC-II-12-0047], of 11 December 2014 are unconstitutional*".

21. The Applicants address the Court with a request that the judgments of the Municipal Court, of 6 March 2009 and of the Appellate Panel of SCSC, of 11 December 2014 are declared unconstitutional and invalid.

Assessment of the Admissibility of the Referral

22. In order to be able to adjudicate the Applicants' Referral, it is necessary for the Court to first examine whether the Applicants have fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

23. In this regard, 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."*

24. 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."*

25. 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."*

26. The Court notes that the Applicants have built their constitutional complaint exclusively on the allegations of violation of Article 46 (Protection of Property) of the Constitution, which 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. 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. 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 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 it prohibits the state authorities the restrictions or deprivation of that right, unless that limitation or deprivation is based on the law.

28. The Court notes that the Appellate Panel of SCSC by Decision [AC-I-14-0102], of 17 September 2014, determined the legal status of the respondent, by which was declared competent for this legal dispute, because pursuant to Article 3 item 14 of the Law No. 04/L-033 on the Special Chamber it is provided that: *"The appellate panel shall have final and exclusive appellate jurisdiction over all appeals from Decisions or Judgments of a specialized panel or any court…"*

29. Accordingly, the Court further notes that the explanation given by the Appellate Panel of SCSC in Judgment [AC-II-12-0047], of 11 December 2014, as a competent court, is clear and legally substantiated, and that the proceedings before the Municipal Court has not been unfair or arbitrary.

30. Moreover, when it comes to the constitutional complaints that indicate an erroneous determination of the factual situation and the erroneous application of the substantive law, the Court notes that in deciding whether the right guaranteed by Article 46 [Protection of Property] of the Constitution was violated, the Court cannot replace the assessment of the regular courts with its assessment, because it is the role of the regular courts to assess the evidence presented and on the basis of which determine the facts relevant for the application of the substantive law.

31. 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"*.

32. Based on this, the mere fact that the Applicants were not successful in the legal proceedings for the confirmation of their property right, is not sufficient to establish a violation of the rights guaranteed by Article 46 of the Constitution, unless they substantiate that by the court decision they have been arbitrarily and unjustly deprived of their property (see case: *Mezotur -Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005).

33. Therefore, the Court considers that the Applicants have not substantiated their allegations, nor they have submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and 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

34. The Court notes that the Applicants request the Court to impose an Interim Measure, which would suspend the liquidation process of the immovable property, which is the subject of this constitutional complaint, until the Court concludes its assessment of the constitutionality of the challenged judgment.

35. In order for the Court to grant an 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.*
>
> *[...]"*

36. As stated above, the Referral is inadmissible and for this reason, there is no *prima facie* case for granting an Interim Measure. Therefore, the request for an Interim Measure must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 and Article 48 of the Law and Rules 36 (2) (b) and 55 (5) of the Rules of Procedure, on 6 July 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY the Parties of this Decision;

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

V. TO DECLARE this Decision effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Arta Rama-Hajrizi

KI95/15, Applicant: Xhevat Berbati, constitutional review of Decision AC. No. 4312/2014, of the Court of Appeal of the Republic of Kosovo, of 27 February 2015

KI 95/15, resolution on inadmissibility of 16 March 2016, published on 5 May 2016

Keywords: *individual referral, right to fair and impartial trial, protection of property, manifestly ill-founded.*

On 23 December 2013, the Basic Court in Peja (Decision, E. No. 1023/203) approved the proposal for enforcement based on the loan contract signed by the Applicant and the Bank and the mortgage contract signed by the Applicant, his guarantors and the Bank.
Against the abovementioned decision, the Applicant and his guarantors filed an objection with the Court of Appeal requesting from the latter to annul the decision of the Basic Court and suspend the enforcement procedure.
On 27 February 2015, the Court of Appeal (Decision, AC. No. 4312/2014) rejected the objection of the Applicant and his guarantors as ungrounded and upheld the decision of the first instance court.

The Applicant alleged that the Decision (Ac. No. 4312/2014, of 27 February 2015) of the Court of Appeal was rendered in violation of Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies]; and Article 54 [Judicial Protection of Rights] as guaranteed by the Constitution.

The Court found that all Applicant's arguments, which were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decision were set out at length, and that, accordingly, the proceedings before the regular courts, taken as a whole were fair. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI95/15
Applicant
Xhevat Berbati
Constitutional Review of the Decision, AC. No. 4312/2014, of the Court of Appeal of the Republic of Kosovo, of 27 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Xhevat Berbati, residing in Nabërgjan, municipality of Peja (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Decision (AC. No. 4312/2014, 27 February 2015) of the Court of Appeal of the Republic of Kosovo (hereinafter, the Court of Appeal), which the Applicant has received on 1 April 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged decision which rejected the Applicants objection filed against the Decision (E. No. 1023/2013 of 23 December 2013) of the Basic Court in Peja concerning an enforcement procedure permitted to be initiated against the Applicant and his guarantors.

4. The Applicant alleges that the regular courts have violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely *"Article 31 [Right to Fair and Impartial Trial] paragraph 1; Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights]."*

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 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 10 July 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, Court).

7. On 19 August 2015 the President by Decision, GJR. KI95/15 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President by Decision, KSH. KI95/15 appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

8. On 18 January 2016 the Court informed the Applicant of the registration of the Referral. On the same date the Court sent a copy of the Referral to the Court of Appeal.

9. On 16 March 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

10. On 27 February 2012 the Applicant signed a loan agreement, as an overdraft authorization, with Banka Ekonomike SH.A (hereinafter, the Bank). On the same date, the Applicant, his guarantors and the Bank signed a mortgage agreement as a means of securing the payment of the loan.

11. The loan had been disbursed to the Applicant. The latter had paid the installments as agreed with the Bank until a certain date. Following some financial difficulties, the Applicant started being late with the scheduled payments and at some point stopped paying the agreed installments.

12. Following these events and after the rescheduling of the loan failed to produce any results, the Bank, in its capacity as creditor, filed a proposal for enforcement against the Applicant and his guarantors, in their capacity as debtor(s), with the Basic Court in Peja. The Bank requested from the Basic Court in Peja to oblige the Applicant and his guarantors to pay the amount of the remaining debt or alternatively authorize the selling of the mortgage left by the guarantors as a means of paying the remaining debt.

13. On 23 December 2013 the Basic Court in Peja (Decision, E. No. 1023/203) approved the proposal for enforcement based on the loan contract signed by the Applicant and the Bank and the mortgage contract signed by the Applicant, his guarantors and the Bank.

14. Against the abovementioned decision, the Applicant and his guarantors filed an objection with the Court of Appeal requesting from the latter to annul the decision of the Basic Court and suspend the enforcement procedure.

15. On 27 February 2015 the Court of Appeal (Decision, AC. No. 4312/2014) rejected the objection of the Applicant and his guarantors as ungrounded and confirmed the decision of the first instance court. The Court of Appeal held that:

> *"The Court rejected in its entirety the objections of the debtors* [the Applicant and his guarantors] *as ungrounded, reasoning that they have mainly submitted the objection to prolong the enforcement procedure because the reasons stated in the objections do not coincide with any of the reasons that would prohibit the enforcement allowed by the court set out in provision of Article 171 of the LEP* [Law on Enforcement Procedure] *[...].*
> *The allegations put forth on the appeal by Xhevat Berbati are considered by the Court as ungrounded, because the first instance court did not erroneously apply the substantive law of which this Court takes care ex officio."*

Applicant's allegations

16. The Applicant alleges that the Court of Appeal has violated his right to fair and impartial trial, right to effective legal remedies and right to judicial protection of rights as guaranteed by the Constitution.

17. In supporting the alleged violation under Article 31 paragraph 1 of the Constitution, the Applicant claims that *"despite his continuous request to get hold of his account history [...] the Bank has never provided him with information in respect of his transactions [...]."*

18. In general, the Applicant also states that the loan agreement could not have been fulfilled as a consequence of his financial difficulties which ultimately obliged the contracting parties to make another agreement. However, according to the Applicant, *"all proposals of the creditor* [the Bank] *were unbearable for the debtor* [the Applicant]".

19. The Applicant further claims that the Bank *"has collected an interest of 150 % more than the monthly installment, a fact which* [he claims] *can be confirmed from the account history of 6 June 2015."*

Assessment of the admissibility of the Referral

20. The Court first examines whether the Applicants have met the requirements of admissibility as foreseen by the Constitution and further specified by the Law and Rules of Procedure.

21. In this respect, the Court refers to Article 113.7 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."*

22. 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."

23. In addition, the Court refers to Rule 36 (2) (d) of the Rules of Procedure which provides that:

"(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. As mentioned above the Applicant alleges that the Decision (AC. No. 4312/2014, of 27 February 2015) of the Court of Appeal was rendered in violation of Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies]; and Article 54 [Judicial Protection of Rights] as guaranteed by the Constitution.

25. With regards to *"legal remedies"* and *"judicial protection of rights"* the Applicant merely referred to the respective articles of the Constitution without providing any further reasoning as to how and why such rights have been violated by the Court of Appeal.

26. With regards to the right to *"fair and impartial trial"*, the Applicant did not claim any violation that might have been done by the Court of Appeal or the Basic Court in Peja. Instead, the Applicant referred to some violations allegedly committed by the Bank such as the interest rate being too high and him not receiving his account history upon his request. He failed to provide any reasoning as to how and why his right to fair trial has been violated by the regular courts.

27. The Court notes that the Basic Court in Peja and the Court of Appeal have reasoned their decisions referring to the provisions of the law in force when rejecting the Applicants' objection to the enforcement procedure. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

28. In relation to this, the Court recalls the reasoning of the Court of Appeal in answering the Applicants' allegation of violations of the law allegedly committed by the Basic Court in Peja when it rejected his objection to the enforcement procedure. The Court of Appeal stated that: "*[...] the conclusion of the first instance court [...] is grounded and supported on the case file and legal provisions, therefore the challenged decision contains complete and convincing reasons. [...] the first instance court did not erroneously apply the substantive law [...].*"

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

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 KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of

16 December 2011). The mere fact that the Applicant does not agree with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution.

31. The Court notes that the Applicant had the opportunity to present his case before the regular courts. The issue of the rightfulness of the enforcement procedure has been extensively addressed by the Basic Court and the Court of Appeal. The latter has responded to all the claims of the Applicant as to whether the enforcement procedure could be prolonged or not. The Court of Appeal noted that the Applicant did not substantiate his objection with respect to wrong application of the material law. The applicant had merely mentioned it but did not provide any arguments to that end. He was mainly interested in prolonging the enforcement procedure, which the Court of Appeal found no reasons to approve.

32. In this respect, it is important to note that the Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

33. In relation to this, the Court notes that the reasoning referring to the objection of the Applicant in respect of the enforcement procedure in the Judgment of the Court of Appeal is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Basic Court in Peja have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

34. For the foregoing reasons, the Court considers that the Applicant has failed to substantiate his claims as to how and why his rights have been violated by the Court of Appeal.

35. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and should be declared inadmissible pursuant to Rules 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 (7) of the Constitution, Articles 48 of the Law and Rules 36 (2) (d) and 56 (2), on 16 March 2016, 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**

Snezhana Botusharova Arta Rama-Hajrizi

KI27/15, Applicant Naser Peci, Constitutional Review of Judgment KRJ. No. 1/2015, of the Supreme Court of the Republic of Kosovo, of 21 January 2015

KI27/15, Resolution on inadmissibility approved on 14 March 2016 and published on 11 May 2016

Key words: individual referral, administrative procedure, rights of third parties, right to fair and impartial trial, manifestly ill-founded referral.

The Supreme Court of Kosovo had approved the Decisions of courts of lower instances regarding the rejection of the statement of claim of the Applicant for being appointed as a Judge in the judiciary of the Republic of Kosovo.

The Applicant appealed with the Constitutional Court mainly due to violation of right to fair and impartial trial because he was eliminated from the competition for being appointed judge contrary to the constitutional and legal applicable provisions.

The Court assessed that the Applicant only mentions the constitutional provisions which guarantee fair and impartial trial without explaining accurately and supporting by concrete evidence his claim that he is a victim of violation of this right. Further on, the Referral does not show in an argued manner that the regular courts of the Republic of Kosovo acted in arbitrary or unfair manner, respectively, contrary to guaranteed constitutional standards. The Referral was declared inadmissible, as manifestly ill-founded

RESOLUTION ON INADMISSIBILITY
in
Case No. KI27/15
Applicant
Naser Peci
Constitutional review of Judgment KRJ. no. 1/2015, of the Supreme Court of the Republic of Kosovo, of 21 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Naser Peci, lawyer from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment KRJ. no. 1/2015, of the Supreme Court, of 21 January 2015, in conjunction with Judgment A. A. No. 321/2014, of the Court of Appeal of Kosovo, of 7 November 2014, and Judgment A. no. 746/2011, of the Basic Court in Prishtina, of 11 June 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment KRJ. no. 1/2015, of the Supreme Court, of 21 January 2015, which allegedly violated the Applicant's right to fair and impartial trial.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (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 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 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of judges: Altay Suroy, Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 26 June 2015, the mandate of Judge Kadri Kryeziu ended. On 1 July 2015, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur replacing Judge Kadri Kryeziu.

8. On 30 September 2015, the Applicant was informed about the registration of the Referral and a copy of the Referral was sent to the Supreme Court.

9. On 14 March 2016, 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 23 February 2011, Kosovo Judicial Council (hereinafter: KJC), announced a competition for vacant positions for judges in several municipalities of the Republic of Kosovo.

11. On an unspecified date, the Applicant applied for the position of a judge.

12. On 13 June 2011, the KJC informed the Applicant that he could not be a part of the process of selection of judges because he had not attended and successfully completed the Initial Legal Education Program (hereinafter: ILEP). The Applicant was also informed that he may bring supporting information until 17 June 2011, to prove that he meets the requirement in question.

13. On 15 June 2011, the Applicant addressed the KJC alleging, among other things, that he deserves that his request be considered in entirety, and not to be rejected due to non-attendance and successful completion of ILEP. The Applicant also claimed that he had 30 years experience and there was no need to attend ILEP.

14. On 22 June 2011, the KJC informed the Applicant that the continuation and successful completion of ILEP was a legal requirement and that due to non fulfillment of this requirement, he cannot be considered a potential candidate in the selection process of judges.

15. On an unspecified date, the Applicant initiated an administrative conflict before the Basic Court in Prishtina against the KJC notifications, of 13 and 22 June 2011.

16. On 11 June 2014, the Basic Court by Judgment, A. no. 746/2011 rejected as ungrounded the Applicant's statement of claim filed against the KJC notifications.

17. The relevant part of the Judgment of the Basic Court reads:

> "*On 22.06.2011, Kosovo Judicial Council has responded to the same candidate and informed him that the KJC on 23.02.2011 published vacancy announcement for judicial positions and requirements for these positions were based on UNMIK Regulations in force and the Regulation on the Process of Appointment of Judges. Article 5 of the Regulation on the Process of Appointment of Judges requires that candidates should have attended and successfully completed this program in order to be considered as potential candidates. Therefore, due to the lack of this requirement, pursuant to Article 2.3 and Article 5 of the Regulation on the Process of Appointment of Judges, the claimant cannot be considered as a candidate in the process, or as a potential candidate for judicial positions.*
>
> *The Court referred also to the Regulation of Kosovo Judicial Council regarding the process for the appointment of judges, Article 5.1 provides that: "KJC, in cooperation with Kosovo Judicial Institute (KJI), for the candidates applying for judicial positions shall organize an entry exam for the Elementary Program for Legal Education. The candidates who do not pass the entry exam or do not successfully pass the Elementary Program for Legal Education shall not be taken into consideration any further for appointment."*

18. On 11 July 2014, the Applicant filed an appeal with the Court of Appeal of Kosovo against the Judgment of the Basic Court, by alleging violation of the provisions of the law on administrative conflict. The Applicant alleged that "*The Basic Court had an obligation to force the respondent (KJC) to issue a decision on his case and not to decide on the merits of the claim (by rejecting it) and the right to be elected a judge based on a regulation is contrary to the Constitution and the law*."

19. On 7 November 2014, the Court of Appeal of Kosovo by Judgment, A. A. no. 321/2014, rejected the appeal of the Applicant and upheld the Judgment of the Basic Court. The Court of Appeal approved in entirety the Judgment of the Basic Court, by finding that the challenged judgment is based on law and evidence - and that the continuation and completion of ILEP – is a criterion prescribed by the law, to be met by all candidates running for the position of a judge in the courts of the Republic of Kosovo.

20. On 2 December 2014, the Applicant filed a request for extraordinary review of a court decision with the Supreme Court, alleging violations of the procedural and substantive law provisions. The Applicant also proposed the annulment of the decision of the Court of Appeal and that the case be remanded for reconsideration. The Applicant, *inter alia*, repeated his allegations that the lower instance courts had an obligation to force the respondent (KJC), to render a decision on his case and that the KJC notifications were in fact the administrative silence and not the acts or administrative decisions.

21. On 21 January 2015, the Supreme Court by Judgment KRJ. no. 1/2015 rejected as ungrounded the request for extraordinary review of a court decision submitted by the Applicant against the Judgment of the Court of Appeal. The Supreme Court upheld the Judgment of the Court of Appeal regarding the determination of factual situation, implementation of procedural and substantive provisions of the administrative law and legal requirements that must be met to be considered a candidate for a judge in the Republic of Kosovo.

22. The relevant part of the Judgment of the Supreme Court reads:

> *"In accordance with the abovementioned provision of Article 6 of the Regulation on the Process of Appointment of Judges, the Supreme Court considers that the lower instance courts have correctly acted when rejected as ungrounded the claimant's statement of claim because of non-issuance of decision by the second instance administrative body- administrative silence. In fact, the Supreme Court finds that by decision- notification of the Assessment Board of the Kosovo Judicial Council ZVVGJP/11/er/163 of 13.06.2011 the claimant was notified that in accordance with Article 6.2 of the Regulation on the Process of Appointment, he does not meet the requirements to be appointed as a judge, taking into account that he has not attended and successfully finished the initial program of the legal education, is considered as decision of the first instance administrative body, whereas decision-notification ZVVGJP/11/dr/240, of 22.06.2011 of the Assessment Board of Kosovo Judicial Council, rendered based on the claimant's objection, is considered as decision of the second instance court administrative body, against which may be initiated administrative conflict. From the above, this court considers that in this administrative matter we do not have to do with non-issuance of decision by second instance administrative body, administrative silence, because of which the lower instance courts have correctly acted when rejected as ungrounded the claimant's statement of claim."*

Applicant's allegations

23. The Applicant alleges that his right to fair and impartial trial, guaranteed by Article 31 of the Constitution was violated.

24. The Applicant emphasizes that *"the content of the decisions is referred only to legal aspect, not to the material one. None of domestic court decisions dealt in substance with the fact whether the Applicant fulfilled the requirements or not for the competition, according to the law and the Constitution."*

25. The Applicant requests the Court *"to hold that the right to fair trial has been violated and that the elimination from competition for a judge was contrary to the Constitution and the law."*

Assessment of the admissibility of the Referral

26. 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.

27. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

28. The Court also refers to 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."*

29. The Court further takes into account Rule 36 (2) (b) of the Rules of Procedure, which reads that:

> *(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".*

30. In the present case, the Applicant requests the Court *"to hold that the right to fair trial has been violated and that the elimination from competition for a judge was contrary to the Constitution and the law."*

31. The Court considers that the regular courts gave sufficient compelling reasons to support their conclusions because they explained: (i) the question of legal requirements to be met by candidates that compete for position of judges, (ii) the legal and constitutional mandate of KJC regarding the nomination of candidates for appointment to judicial offices, (iii) the binding nature of the requirement for legal education (ILEP) regardless of the experience of candidates and (iv) have assessed that the notifications of the KJC are administrative decisions and not administrative silence as alleged by the Applicant.

32. The Court reiterates that, under the Constitution, it is not its task to act as *"a court of fourth instance"* in respect to the decisions taken by regular courts. Consequently, the Court does not deal with errors of fact or interpretation of law (legality) allegedly made by regular courts, unless and insofar they may have violated the rights and freedoms protected by the Constitution (constitutionality) (See the case *Akdivar v. Turkey*, No. 21893/93, ECHR, Judgment of 16 September 1996, para. 65, also, *mutatis mutandis*, in case no. KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility, of 5 April 2012).

33. The Court notes that the allegations raised by the Applicant present issues of legality and of facts, not of the constitutionality.

34. The Court also notes that the Applicant merely mentions the constitutional provision that guarantees fair and impartial trial, without specifically explaining and supporting with concrete evidence his claim that he is a victim of a violation of this right. Moreover, the Referral does not indicate that the regular courts of the Republic of Kosovo have acted in an arbitrary or unfair manner, namely contrary to the constitutionally guaranteed standards.

35. The mere fact that the Applicant is dissatisfied with the outcome of the proceedings conducted by the regular courts, cannot of itself raise an arguable claim for breach of Article 31 [Right to Fair and Impartial Trial] guaranteed by the Constitution (see *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005.

36. In sum, the Court finds that the presented facts do not in any way justify the allegation of violation of the rights guaranteed by the Constitution.

37. Accordingly, 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.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, on 14 March 2016, 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

K131/15, Applicant Selvinaz Top and others, Request for Constitutional Review of Decision Rev. no. 60/2015, of the Supreme Court of Kosovo, of 25 May 2015.

KI131/15, Resolution on inadmissibility, of 15 March 2016, published on 17 May 2016.

Key words*: individual referral, right to fair and impartial trial, right to property, manifestly ill-founded referral.*

By Judgment Rev. No. 60/2015, of 25 May 2015, the Supreme Court of Kosovo rejected the request of the Applicants for revision against the Judgment of the Court of Appeal in Prishtina, also the Chief Prosecutor Office rejected the request of the Applicants for protection of legality.

The Applicants allege that the Supreme Court violated the right to fair and impartial trial and protection of property as guaranteed by Article 31 and Article 46 of the Constitution. Further on, they added that the regular courts did not examine all pieces of evidence in their case.

The Constitutional Court ascertained that the facts presented by the applicants in no way reason the allegation for violation of any constitutional right or any right guaranteed by ECHR, therefore, it cannot be concluded that there is a violation of human rights in the challenged decision. The referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI131/15
Applicant
Selvinaz Top and others
Request for constitutional review of Decision Rev. no. 60/2015, of the Supreme Court of Kosovo, of 25 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicants are Ms. Selvinaz Top, Mr. Hilmi Top, Mr. Bajram Top, Ms. Sevim Zaimi (maiden name Top), Mr. Hysni Top, Ms. Sehar Kitmiri (maiden name Top), Mr. Adnan Top and Ms. Sejlan Damka, all from Prizren.

Challenged decision

2. The last challenged decision is Decision Rev. no. 60/2015, of the Supreme Court, of 25 May 2015, which was served on the Applicants on 2 July 2015. The Applicants also specifically challenge Judgment Ac. no. 5045/12 of the Court of Appeal, of 4 November 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged court decisions, which allegedly violated the rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), under Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 6 of the European Convention of Human Rights (hereinafter: ECHR).

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 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 31 October 2015, the Applicant submitted via mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 December 2015, the President of the Court, by Decision appointed Deputy President Ivan Čukalović as Judge Rapporteur, and the Review Panel, composed of Judges: Robert Carolan, Almiro Rodrigues and Arta Rama-Hajrizi.

7. On 21 January 2016, the Court informed the Applicants about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 15 March 2016, 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 3 May 1962, the predecessor of the Applicants, A.T. signed a contract on gift with the then Municipality of Prizren (Leg. no. 190/62), by which donated to the Municipality the immovable property, which according to the cadastral data specified in the contract, was in his ownership.

10. On an unspecified date, the Applicants, in capacity of the descendants of A.T., filed a claim to the Municipal Court in Prizren for annulment of the contract on gift, with an allegation that the contract was concluded without the will of their predecessor and under the conditions of the constant pressure by the then regime.

11. On 15 October 2015, the Municipal Court in Prizren, by Judgment C. no. 133/07, approved the Applicants' statement of claim as grounded and declared NULL the contract on gift of immovable property concluded between A.T. and the Municipality of Prizren. The Court obliged the Municipality "*to return the ownership, possession and free use*" of the immovable property of their predecessor to the Applicants in capacity of co-owners, by declaring them the legitimate heirs of that property.

12. The Municipal Court, in its Judgment, stated among the other: "*Following the administration of all these pieces of evidence separately and all of them together, in the concrete case, the court, by the assessment of the statements of the witnesses heard which completely comply with each other and confirm the fact that the contract on gift of the immovable property was not concluded with the free will of the person offering it, but it was concluded under pressure made by the then power, namely the gift receiver, which was made by the then state activists, and as such this contract is absolutely null*".

13. On 12 December 2012, the Public Attorney of the Municipality of Prizren filed an appeal against the Judgment of the Municipal Court due to essential violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.

14. On 4 November 2014, the Court of Appeal of Kosovo rendered Judgment AC. No. 5045/12, by which modified the judgment of the court of first instance, by deciding that the Applicants claim is rejected as ungrounded.

15. The Court of Appeal, by referring to the stance of the first instance court regarding the contract on gift, stated: *"Such a legal stance cannot be accepted as fair and lawful due to the reason that, in accordance with the assessment of this Court, the substantive law was erroneously applied on such a factual situation...and... on the basis of the general rules of civil right, such a contract would be relatively invalid and that its annulment due to such reasons could be requested within a time limit of one year, starting from the date when the cause of jeopardy was known, the ceasing of the cause of threat (subjective time limit), whereas such a right is lost in a time limit of 3 years (objective time limit)".*

16. The Court of Appeal, in its reasoning, further stated: "*Due to the fact that all the time limits for requesting the relative nullity of the contract have passed, the time limits which are preclusive, in the present legal-civil case, the nullity of the contract cannot be requested after the expiry of the time limit of around 40 years, as the claimants have done in the present case",* therefore, concluded that the challenged judgment should be modified and the statement of claim be rejected as such.

17. On 20 January 2015, the Applicants filed a request for revision with the Supreme Court of Kosovo against Judgment AC. no. 5045/12, of the Court of Appeal in Prishtina, of 4 November 2014, and on the same date against this judgment filed a proposal with the State Prosecutor of Kosovo for protection of legality.

18. On 18 February 2015, the Chief Prosecutor Office rendered notification KMLC no. 9/15, whereby informing the Applicants that he "*considers that there is no legal ground for the initiation of the request for protection of legality*".

19. On 25 May 2015, the Supreme Court of Kosovo rendered Decision Rev. no. 60/2015, by which rejected the Applicant's revision, because *"according to the assessment of the Supreme Court of Kosovo, the revision of the claimants filed against the second instance judgment is inadmissible due to the value of contest",* by stating that the Applicants, at the time of filing the claim, presented the considerably lower value of the contest than the value allowed for the request for revision under the applicable law at that time, whereas they made specification of claim after expiry of deadlines provided by the law.

Applicant's allegations

20. The Applicants allege that by challenged decisions was violated the right to fair and impartial trial (Article 31 of the Constitution and Article 6 of ECHR), because *"the Court of Appeal did not analyze correctly all the case file documents",* which according to the Applicant, if they were completely administered, it would lead to real, fair and favourable outcome of the entire court proceedings for the Applicants.

21. According to Applicants, Article 46 of the Constitution [Protection of Property] was, violated because by judicial decisions they were arbitrarily deprived of their property rights over the immovable property which otherwise they would have enjoyed based on inheritance.

Admissibility of the Referral

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

23. In that respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

24. The Court further takes into account Article 48 of the Law (Accuracy of the Referral) which provides:

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

25. The Court also takes into account Rule 36 of the Rules of Procedures, which 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:
[...]
(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights".

26. When assessing the allegations raised by Applicant, the Court notes that Decision Rev. no. 60/2015, of 25 May 2015, and Judgment Ac. no. 5045/12, of the Court of Appeal, of 4 November 2014, are challenged.

Relevant constitutional provisions regarding the case

Article 31 [Right to Fair and Impartial Trial]

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

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

[...]

Article 46 [Protection of Property]

1. The right to own property is guaranteed.

2. Use of property is regulated by law in accordance with the public interest.

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.

[...]

27. Having assessed the constitutionality of the challenged decision in the light of the allegations of the constitutional violations and facts presented by the Applicants, by comparing these facts with the content of the provisions above, the Court finds that these allegations are based on erroneous and incomplete determination of factual situation, namely on the erroneous assessment of the evidence presented by the Applicants by the regular courts.

28. The Court has consistently emphasized that it is not under its jurisdiction to replace by its own assessment of facts the assessment made by the regular courts, because under the general rules it is the duty of those courts to assess the facts presented before them (see case KI47-48/15, constitutional review of the Judgment of the Special Chamber of the Supreme Court, AC-II-14-0057, of 12 March 2015, the Applicants *Beqir Koskoviku* and *Mustafë Lutolli*) and that it is the duty of this Court to assess whether the court proceeding viewed in its entirety was fair and impartial, as required by Article 6 of the ECHR (see, among other, *Edwards v. United Kingdom,* 16 December 1992, p. 34, Series A, no. 247 and *Vidal v. Belgium*, 22 April 1992, p. 33, Series A, no. 235).

29. It is essential for the Court the issues on which existence depend the assessment of possible violations of the constitutional rights and not clearly legal issues, which were mainly the facts presented by the Applicants (see, *mutatis mutandis, i.a., Akdivar vs. Turkey,* 16 September 1996, R.J.D, 1996-IV, para. 65).

30. Based on the principle of subsidiarity, the Court cannot take the role of the fourth instance court and it does not adjudicate on the final outcome of the court decisions (see *Fc Metrebi v. Georgia*, par. 31, Judgment of ECHR, of 31 July 2007), while judging by the circumstances of this case, the Applicants' primary goal seems to have been precisely the challenging of the outcome of the court proceedings.

31. Nothing in the case presented by the Applicants does not indicate that the court proceedings in the present case viewed in entirety were unfair or arbitrary in order that the Constitutional Court is satisfied that the very essence of the right to fair and impartial trial was violated.

32. Based on the above, it is the duty of the regular courts to assess whether the challenged contract on gift should have been examined from the perspective of the relative or absolute nullity and not of this Court. The Court was not provided any evidence that the request of the court to the parties for translation of an authorization for one of the Applicants to another official language violated the equal treatment of the parties and placed them at a substantial disadvantage *vis-à-vis* the opponent party to the extent that

the judicial process is degraded substantially in its entirety (see *Dombo Beheer vs. Netherland*, Judgment of 27 October 1993, Series A, no. 274), therefore, in these circumstances, the Court does not find that in the challenged decisions there is violation of Article 31 of the Constitution and of Article 6 of ECHR.

33. The Court further concludes that the Supreme Court reasoned entirely its decision regarding the revision, explaining in a detailed manner why the request for revision is inadmissible, by clearly substantiating the legal basis for inadmissibility and based on the Law on Contested Procedure at the time when the Applicants' claim was filed, therefore, there is no element of arbitrariness in the decision mentioned above and, consequently, no violation of Article 31 of the Constitution or Article 6 of the ECHR.

34. As to the other allegation of the Applicants for violation of Article 46 of the Constitution [Protection of Property], the Court notes that the Court of Appeal reasoned broadly and thoroughly its decision and this Court cannot conclude that there has been a violation of paragraph 3, Article 46 of the Constitution, because the disputable issue of ownership was confirmed by the court decision and is not arbitrary.

35. In these circumstances, the Court holds that the facts presented by the Applicants do not in any way justify the allegation of violation of the constitutional right or the right guaranteed by the ECHR, therefore, it cannot be concluded that there is a violation of human rights in the challenged decision, and in accordance with Rule 36, paragraph 2, item b, finds that the Referral is to be declared inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure, on 15 March 2016, with majority of votes

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**
Ivan Čukalović	Arta Rama-Hajrizi

KI114/15, Applicant Feride Aliu – Shala, Constitutional review of Judgment Pml. No. 95/2015 of the Supreme Court of Kosovo of 12 May 2015

Case no. KI114/15, Resolution on Inadmissibility rendered on 8 March 2016 and published on 17 May 2016.

Keywords*: Equality before the law, right to fair and impartial trial, right to legal remedies and judicial protection of rights.*

The Basic Prosecution in Mitrovica filed indictment against the Applicant under the suspicion of having committed the criminal offence of "theft" with the Basic Court in Mitrovica. After the case was remanded to the first instance court for retrial by the Court of Appeal, the Basic Court in Mitrovica found that the Applicant is guilty for the commission of the criminal offence of theft under Article 352 of the CCK and sentenced her to a term of one (1) year of imprisonment. The Court of Appeal of Kosovo following the appeal of the Applicant, modified the judgment of the trial court, thereby sentencing the Applicant to four (4) month imprisonment which will not be executed within one (1) year under condition that the Applicant does not commit another offence within the stated period.

The Applicant alleges that decision rendered by the Supreme Court of Kosovo is unfair and thus in contravention with Article 31 of the Constitution and Article 6 of the Convention.

The Court considers that while Articles 31 of the Constitution and 6 of the Convention guarantee the right to a fair hearing, they do not lay down any rules on admissibility of evidence as such, which under the applicable law in Kosovo is primarily a matter of legality. The Court also 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. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case KI114/15
Applicant
Feride Aliu-Shala
Constitutional review of
Judgment Pml. No. 95/2015 of the Supreme Court of Kosovo
of 12 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mrs. Feride Aliu-Shala from Mitrovica (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges Judgment Pml. No. 95/2015 of the Supreme Court of Kosovo of 12 May 2015 which was served upon her on 21 May 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment Pml. No. 95/2015 of the Supreme Court of Kosovo of 12 May 2014.

4. The Applicant alleges violation of Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 54 [Judicial protection of Rights] of the Constitution in connection with Article 6 3 (d) of the European Convention on Human Rights (hereinafter, the Convention).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 47 and 48 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 3 September 2015 the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 14 October 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 Arta Rama-Hajrizi.

8. On 8 December 2015 the Court notified the Applicant about the registration of the Referral and asked her to fill-in the referral form. On the same day a copy of the Referral was sent to the Supreme Court of Kosovo.

9. On 8 March 2016 the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 16 August 2011 the Applicant - by occupation police officer – at the premise of the Police Station in the southern part of Mitrovica, in order to unlawfully appropriate material gains for herself, stole the amount of 12 Euros from injured parties NA and HN.

11. On 24 April 2012 the Basic Prosecution in Mitrovica filed indictment against the Applicant under the suspicion of having committed the criminal offence of "theft" as provided for by Article 325 of the Criminal Code of Kosovo (hereinafter, the CCK).

12. On 25 July 2013 the Basic Court in Mitrovica by Decision P. No. 40/12 held that: (i) the evidence supporting the indictment of the Public Prosecutor was not obtained in a legal manner, (ii) the certification on seizure of objects (banknote) and statements of injured parties and of the Applicant were declared inadmissible, (iii) the inadmissible evidence must be separated from the case-file and (iv) the proposal of the Applicant to reject the indictment shall be decided by a separate decision. The trial court reasoned that the evidence must be declared inadmissible because the Public Prosecutor and the Kosovo Police had acted without a court order and were thus in breach of Criminal Procedure Code of Kosovo (hereinafter, the CCCK) and the Law on Police.

13. On 1 August 2013 the Public Prosecutor filed an appeal against the decision of the trial court with the Court of Appeal of Kosovo. The Public Prosecutor complained that the decision of the trial court is marred by essential violations of the criminal procedural law in addition to erroneous and incomplete assessment of the factual situation.

14. On 4 October 2013 the Court of Appeal of Kosovo by Decision P. No. 573/2013: (i) approved the complaint of the Public Prosecutor with regard to admissibility of evidence and remanded the case for fresh reconsideration by the trial court and (ii) upheld the finding of the trial court with regard to the seizure of objects.

15. As to the admissibility of evidence, the relevant part of the decision of the Court of Appeal of Kosovo reads:

"By the Appeal of the Prosecution, the Decision is appealed due to the erroneous and incomplete ascertainment of the factual situation, alleging that based on the statements found in the case files, it results that the interview was conducted for the criminal offence, of 16 August 2011, and not in a selective manner, as the Court did as regards the focusing on the items of evidence for the seizure of the banknote, therefore based on the authorizations which the Police has, within the meaning of Article 70 of the CPCK, it has a series of authorizations, explaining the activity provided for in Article 70, paragraph 3, item 1.13 of the CPCK: "to undertake other necessary steps and actions provided for by the law", and based on this legal provision, it is clearly reached to the conclusion that after the receipt of the information on a suspected criminal offence, the Police undertakes all the actions within its authorizations, always acting within the framework of legal authorizations".

16. As to the seizure of objects (banknote), the relevant part of the decision of the Court of Appeal of Kosovo reads:

"The Trial Panel considered the Appeal and the other case files and reached the conclusion that all the undertaken actions are acceptable in this stage of the procedure, except for the issue related to the certificate of the seizure of objects, of 17 August 2011, no. 2011-BC-1696, for which the Court decided to declare it as an inadmissible piece of evidence, because the procedure was not complied with in conformity with the relevant legal provisions, therefore the provision of Article 105, paragraph 5 of the CPCK was violated, which was declared inadmissible by the decision".

17. On 2 October 2014 the Basic Court in Mitrovica by Judgment P. no. 40/2012 found that:

"*INDICTMENT IS REJECTED BECAUSE on 16 August 2011 in the premises of the police station in southern Mitrovica (the Applicant) in order to gain material benefit unlawfully had taken the amount of 12 euro from injured parties NA and HN by taking advantage of the fact that the injured parties were not in their offices.*

IS FOUND GUILTY because (the Applicant) on 17 August 2011 at 10:00 o'clock in the police station in southern Mitrovica by taking advantage of the fact that cleaning personnel were not in the office has extracted the amount of 5 euro with serial number X25186104209 from the personal bag of the injured HN".

18. The Basic Court in Mitrovica held that the Applicant is guilty due to commission of the criminal offence of theft under Article 352 of the CCK and sentenced her to a term one (1) year of imprisonment whose execution was postponed for three (3) years under condition that the Applicant does not commit another offence within the stated period.

19. On 20 October 2014 the Applicant filed an appeal against the above-stated decision of the trial court with the Court of Appeal of Kosovo. The Applicant, inter alia, pleaded before appellate court essential violations of the procedural and substantive criminal law, erroneous and incomplete assessment of the factual situation and sentence of the Applicant.

20. On 10 December 2014 the Court of Appeal of Kosovo by Judgment PA1. No. 1407/2014 approved the complaint of the Applicant and modified the judgment of the trial court with

regard to the sentence of the Applicant thereby sentencing the Applicant to four (4) month imprisonment which will not be executed within one (1) year under condition that the Applicant does not commit another offence within the stated period.

21. As to the admissibility of evidence, the relevant part of the judgment of the Court of Appeal reads:

> *"The allegation of the Defense Counsel of the Defendant that the first instance court, for the ascertainment of the factual situation, substantiated the judgment only on the statement of the injured person NA and partially on the one of Defendant Feride Shala, according to the assessment of this court, the allegation that the judgment is substantiated only on the testimony of the injured person and the witnesses, and on the statement of the Defendant, is ungrounded because these are not the only evidence in this legal – criminal matter, but the first instance court substantiated its decision also in other evidence, mainly on the statements of witnesses SR and AR, but also on a series of other material evidence which are in the case files".*

22. As to the commuting of the sentence, the relevant part of the judgment of the Court of Appeal court reads:

> *"According to the assessment of this court, the first instance court has correctly ascertained the mitigating circumstances, but the approach to and assessment of them was not correct, since a sentence beyond the foreseen legal limit foreseen for this criminal offense was imposed on the Defendant, therefore, taking into account this as well as the fact that it has been a long time since the time when the criminal offense was committed, this court imposed the punishment as in the enacting clause of this judgment on the Defendant, convinced that the imposed sentence is in harmony with the degree of the criminal liability of the Defendant as perpetrator and with the intensity of the endangering or damage done to the protected value and that by this sentence, the purpose of the punishment, foreseen by the provisions of Article 41 of the CCRK, will be achieved".*

23. On 31 March 2015 the Applicant filed a request for protection of legality with the Supreme Court of Kosovo. The Applicant alleged essential violations of procedural and substantive criminal law by the courts of lower instance. The Applicant complained, inter alia, that: (i) there is a considerable contradiction between the rationale of the decisions rendered by the lower courts and the content of the minutes with regard to the statements made in this criminal matter (ii) that the impugned decisions are based on inadmissible evidence and do not contain reasons on the crucial facts of this criminal matter and (iii) the court of lower instance did not summon witnesses proposed by the Applicant.

24. On 12 May 2015 the Supreme Court of Kosovo by Judgment Pml. No. 95/2015 rejected the Applicant's request for protection of legality filed against decisions of the courts of lower instance.

25. As to the admissibility of evidence, the relevant part of the judgment of the Supreme Court reads:

> *"According to the assessment of this court, the fact that the abovementioned evidence was declared inadmissible and as such it was separated from the case files is grounded, but by reviewing the case files and especially the minutes of the court*

sessions of the first instance court, this court assessed that the confirmation on confiscation of the banknote of 5 Euros, with serial number X25186104209, was not considered as evidence and the judgment was not substantiated on this evidence at all, but the judgment was substantiated on a multitude of other evidence administered in the court trial.

The fact that the first instance court has never decided on the validity of the abovementioned evidence is also grounded, since the Court of Appeals of Kosovo by Decision Ap.no.573/13, of 04.10.2013, decided to annul the decision of the first instance court as regards the statements of witnesses HN, NA and Convicted Feride Shala, given to the police on 17.08.2011, and to remand the case for reconsideration, but these statements have never been read anymore and they have not been administered as evidence in the court trials of the first instance court, but the witnesses and the Convicted have been heard in the court trial, therefore, the factual situation has been confirmed by these statements and other evidence administered in the court trial".

26. As to the examination of witnesses, the relevant part of the judgment of the Supreme Court reads:

"This court considers that the judgment of the first instance court has been substantiated on the evidence administered in the court trials and that the statements of the witnesses have been given in conformity with the criminal procedure provisions, whereas the fact that they have undertaken actions which then have served as evidence against the Convicted cannot be considered as unlawful because they are events which have preceded the flow itself of the incriminating actions of the Convicted. The fact that the court did not invite other witnesses, who were aware of the entire event, does not mean that the first instance court did not have sufficient evidence to confirm the guilt of the Convicted".

27. Whether the law was violated to the detriment of the Applicant, the relevant part of the judgment of the Supreme Court reads:

"*It should be mentioned that the first instance court, by rendering the decision on the sentence, made violations to the detriment of the Convicted, when it imposed the sentence of imprisonment of 1 (one) year, conditioning with 3 (three) years, since for the criminal offense for which she was found guilty – Theft, provided by Article 325, paragraph 2 of the CCK, the maximum of the foreseen punishment is the sentence of imprisonment of 6 (six) months. But, the second instance court, by approving the appeal of the Defense Counsel of the Convicted and by modifying the judgment of the first instance court only as regards the decision on the sentence and by imposing the sentence of imprisonment of 4 (four) months on her, a sentence which shall not be executed if the Convicted does not commit another criminal offense within the time limit of 1 (one) year, has reviewed this violation, therefore, this allegation that the law has been violated to the detriment of the Convicted is not grounded anymore".*

28. Whether the offence was negligible so as to warrant exculpatory judgment to the benefit of the Applicant, the relevant part of the judgment of the Supreme Court reads:

"The allegation that the criminal law has been violated to the detriment of the Convicted, since she was found guilty for the criminal offense of "Theft", provided by

Article 325, paragraph 2 of the CCK, with the amount of money stolen being 5 Euros and we are dealing with a criminal offense of minor significance under Article 7 of the CCK, is ungrounded. In fact, the criminal code has been violated to the detriment of the Convicted by the first instance court when re-characterizing the criminal offense and finding her guilty for the criminal offense of "Theft", provided by Article 325, paragraph 2 of the CCK, due to the fact that she stole the amount of 5 Euros from the bag of the Injured person, and this is not an act of minor significance because the legal qualification of this criminal offense depends on the manner how it was committed and not on the amount of money unlawfully benefited. The Convicted could not have known the amount of money which were in the bag at the moment when she stole them from the bag of the injured person, therefore, in the present case, the amount of money is irrelevant for committing this criminal offense".

The Law

The relevant part of the Criminal Code of the Republic of Kosovo reads:

Article 325
Theft

"Whoever takes the property of another person valued at fifty (50) EUR or more with the intent to unlawfully appropriate it for himself, herself or for another person shall be punished by a fine and by imprisonment of up to three (3) years.

If the value of the stolen property taken is less than fifty (50) EUR, the perpetrator shall be punished by a fine or by imprisonment of up to six (6) months".

The relevant part of the Code of Criminal Procedure of the Republic of Kosovo reads:

Article 70
Police Investigation Steps

"After receiving information of a suspected criminal offence, the police shall investigate whether a reasonable suspicion exists that a criminal offence prosecuted ex officio has been committed.

The police shall investigate criminal offences and shall take all steps necessary to locate the perpetrator, to prevent the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings.

In order to perform the tasks under the present Article the police shall have the power:

[...]

to detect, collect and preserve traces and evidence from the scene of the incident a suspected criminal offence and to order forensic testing of that evidence by the forensic laboratory in accordance with Article 71 of this Code;

to interview witnesses or possible suspects in accordance with Article 73 of this Code;

to undertake other necessary steps and actions provided for by the law".

Applicant's allegations

29. The Applicant alleges violation of Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 54 [Judicial protection of Rights] of the Constitution in connection with Article 6 3 (d) of the European Convention on Human Rights (hereinafter, the Convention).

30. The Applicant alleges that: *"The Court grounded the judgment on inadmissible pieces of evidence, such as the certification on the confiscation of objects – 5-Euro banknote, its serial number being X25186104209, which was declared an inadmissible piece of evidence, by the Decision of the first instance court, of 25 July 2013".*

31. The Applicant alleges that: "*In the decisions of the regular courts it is mentioned that reports police officers ZX and AZ were read, however they should have been summoned to declare themselves in compliance with Article 329 paragraph 4 of the CPCK".*

32. The Applicant alleges that: "*When deciding on the Appeal of the Defendant, the Court of Appeals did not see it reasonable to go into more details as regards the ascertainment of the factual situation".*

33. The Applicant alleges that decision rendered by the Supreme Court of Kosovo is unfair and thus in contravention with Article 31 of the Constitution and Article 6 of the Convention.

34. Finally the Applicant asks the Court: (i) to declare her referral admissible, (ii) to find violation of Articles 21, 24, 31, 33, 54 of the Constitution, Article 7 of the Universal Declaration of Human Rights (hereinafter, the UDHR) and Article 6 of the Convention and (iii) establish any right or responsibility for the parties in this referral which this honored Court deems as legally grounded and reasonable.

Assessment of admissibility

35. 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.

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 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".

38. The Court further takes into account Rule 36 2 (d) of the Rules of Procedure which foresee:

> *"(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".*

39. As to the allegation on admissibility of evidence, the Court considers that while Articles 31 of the Constitution and 6 of the Convention guarantee the right to a fair hearing, they do not lay down any rules on admissibility of evidence as such, which under the applicable law in Kosovo is primarily a matter of legality. In particular, it is not the function of the Court to deal with errors of fact or law allegedly committed by regular courts unless and in so far as they may have infringed rights and freedoms protected by the Constitution (See the case of *Schenk v. Switzerland,* [GC], application no. 10862/84, Judgment of 12 July 1988, paras. 45-46).

40. In this regard, 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).

41. As to the allegation of a breach of Article 6 § 3 (d) of the Convention, the Court recalls 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 defendants seek to adduce. Article 6 § 3(d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses. It does not require the attendance and the examination of every witness in the accused's behalf; its essential aim, as is indicated by the words "*under the same conditions",* is full *"equality of arms"* in the matter. It is accordingly not sufficient for the Applicant to complain that she has not been allowed to question certain witnesses; she must, in addition, support her request by explaining why it is important for the witnesses concerned to be heard, and their evidence must be necessary for the establishment of the truth and the rights of the defense (see, among other authorities, *Perna v. Italy,* [GC], application no. 48898/99, Judgment of 6 May 2003, para. 29).

42. In this regard, the Court notes that the Applicant alleges: "*In the decisions of the regular courts it is mentioned that reports police officers ZX and AZ were read, however they should have been summoned to declare themselves".*

43. In respect to the above-stated allegation, the Court refers to the reasoning of the Court of Appeal: "*... the statement of the Defendant, is ungrounded because these are not the only evidence in this legal – criminal matter, but the first instance court substantiated its decision also in other evidence, mainly on the statements of witnesses SR and AR, but also on a series of other material evidence which are in the case files".*

44. In the light of the allegations of the Applicant and the reasoning of the Court of Appeal, the Court must examine two key questions: (i) whether the Applicant has been given an adequate and proper opportunity to challenge the depositions of witnesses ZX and AS and (ii) whether the statements of witnesses ZX and AS are the sole or decisive evidence

against the Applicant. (See, for example, the case of *Luca v. Italy,* [ECtHR] application no. 33354/96, Judgment of 27 February 2001, paragraph 40 and also see *mutatis mutandis* the case of *Scholer v. Germany,* [ECtHR] application no. 14212/10, Judgment of 18 March 2015, paragraphs 48-49).

45. The Court considers that the content of the Referral reveals that: (i) the Applicant was given the opportunity to challenge the deposition of witnesses ZX and AS in all trial and appellate proceedings before regular courts and (ii) the statements of witnesses ZX and AS were important but were not the sole or decisive to the outcome of the Applicant's case, and moreover, the depositions of witnesses were to the detriment of the Applicant, and (iii) that the regular courts - in addition - have also based their conclusions on statements of other witnesses and on a series of other material evidence contained in the case files.

46. Moreover, the Court notes that in the context of this case the absence of witnesses ZX and AS and admission of their depositions as evidence will not automatically result in a breach of Article 6 § § 1 and 3 (d) of the Convention (See *Scholer v. Germany).*

47. The Court notes that errors of fact and of law allegedly committed in the course of regular proceedings before the trial courts were later redressed in the appellate proceedings by the Court of Appeal and the Supreme Court respectively, namely by addressing to a considerable degree questions of admissibility of evidence, examination of witnesses, the nature of the offence committed by the applicant and the altitude of the applicant's sentence which were all central questions to that case.

48. 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).

49. 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).

50. 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).

51. In these circumstances, the Court considers that the Applicant has not substantiated her allegations of a violation of her fundamental human rights guaranteed by the Constitution, the Convention or the UDHR because the facts presented by her do not show in any way that regular courts had denied her the rights guaranteed by the Constitution.

52. 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 8 March 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately;

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

KI62/15, Applicant Xhavit Shala, Constitutional review of Decision Ac. no. 4332/2012 of the Court of Appeal of 26 November 2014

KI62/15, Resolution on Inadmissibility rendered on 15 March 2016 and published on 17 May 2016

Keywords: *individual referral, protection of property, out of time referral*

The regular courts rejected as ungrounded the statement of claim of the Applicant for compensation due to expropriation.

The Applicant alleged among the other that the regular courts have violated his right to protection of property.

The Court notes the Referral was filed after the expiry of 4 (four) months from the date when the Decision of the Court of Appeal was served on the Applicant.

RESOLUTION ON INADMISSIBILITY
In
Case No. KI62/15
Applicant
Xhavit Shala
Constitutional review of Decision Ac. no. 4332/2012 of the Court of Appeal 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Xhavit Shala from village of Mushtisht, Municipality of Suhareka (hereinafter, the Applicant), represented by Mr. Ismet Islami, lawyer practicing in Suhareka.

Challenged decision

2. The Applicant challenges Decision Ac. no. 4332/2012 of the Court of Appeal of Kosovo (hereinafter, Court of Appeal), of 26 November 2014, which was served on the Applicant on 11 December 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated Article 46 [Protection of Property] of the Constitution 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 15 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 Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.

7. On 24 July 2015, the Court notified the Applicant and the Court of Appeal about the registration of the Referral.

8. On 29 July 2015, the Basic Court in Prizren notified the Court when the challenged decision was served to the Applicant.

9. On 28 January 2016, the Court requested from the applicant to submit additional documents required to complete his referral.

10. On 15 February 2016, the Applicant submitted to the Court the requested documents.

11. On 15 March 2016 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. On 26 October 2005, the Municipal Court in Suhareka (Decision C.no 55/05) approved the claim of the Applicant and obliged the Municipality of Suhareka to compensate the Applicant for the expropriated land. The Municipality of Suhareka submitted an appeal to the District Court in Prizren against the decision of 26 October 2006.

13. On 22 September 2006 the District Court in Prizren (Decision Ac. no. 510/05) quashed the decision of the Municipal Court of 26 of October 2006 and remanded the case for retrial before the first instance court.

14. On 17 September 2010 the Municipal Court in Suhareka (Decision C. nr. 285/2006) rejected as ungrounded the claim of the Applicant.

15. On 5 July 2012, the District Court in Prizren (Decision Ac. no. 598/2010) rejected the appeal submitted by the Applicant and upheld the decision of the first instance court of 17 September 2010.

16. On 16 October 2012, the Municipal Court in Suhareka rejected the request for revision submitted by the Applicant. The Applicant submitted an appeal.

17. On 26 November 2014, the Court of Appeal (Decision Ac. no. 4332/2012) refused the appeal as unfounded and upheld the decision of the Municipal Court of 16 October 2012.

Applicant's allegations

18. The Applicant claims that the Judgment of the Appellate Court violated his right to protection of Property.

19. The Applicant alleges that the Court of Appeal deprived the Applicant from his right to protection of Property, because according to the Applicant: *"it did not notify the applicant concerning the rules provided by the provisions of Article 218 of the Law on Contested Procedure. The Court of Appeal found that the request for revision is*

impermissible because in the claimant's claim it is stated that the value of the contest is € 100 which is why the Revision is impermissible as the stated value of the contest should have been over € 3.000. Thus, the request for revision was rejected as impermissible which in turn means that the court should have notified the claiming party pertaining to the consequences of setting the value of the contest at € 100"

Admissibility of the Referral

20. 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.

21. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

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

22. The Court also refers to Article 49 of the Law, which provides:

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

23. The Court further takes into account 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."*

24. The Court notes that Decision Ac. no. 4332/2012 of the Court of Appeal was rendered on 26 November 2014 and served on the Applicant on 11 December 2014 whereas the Applicant submitted his Referral to the Court over five months later on 15 May 2015.

25. Consequently the Referral was filed with the Court after the expiry of four months from the date when the Decision of the Court of Appeal was served on the Applicant.

26. 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).

27. 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, thus, is inadmissible.

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 15 March 2016 unanimously:

DECIDES

I. TO DECLARE the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately

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

KI48/14 and KI49/14, Applicant Municipality of Vushtrri, Constitutional Review of the Decisions of the Basic Court in Mitrovica Branch in Vushtrri: (1) CP No. 46/14, of 6 March 2014, (2) CP No 49/14, of 6 March 2014, (3) CP 53/14, of 6 March 2014, (4) CP No. 52/14, of 11 March 2014, (5) CP No. 54/14, of 11 March 2014 and Decision Ac. No. 1369/14, of the Court of Appeal of Kosovo, of 27 June 2014

KI48/14 and KI49/14, Resolution on inadmissibility of 15 March 2016, published on 17 May 2016.

Key words: individual request, right to fair and impartial trial, right to appeal, moot case, premature referral, interim measure.

Municipal Court in Vushtrri allowed the execution of all proposers regarding the monetary compensation for the expropriated properties to the detriment of the Applicant. The Court of Appeal, based on Applicant's appeals, in identical legal cases issued different decisions.
The Applicant alleged that these decisions violate Article 31 [Right to Fair and Impartial Trial] and Article 102, paragraph 5 [Right to Appeal], of the Constitution of Kosovo. The Applicant also requested imposition of interim measure.

The Court notes that, as regards the questions raised regarding the cases in the proceedings initiated by the State Prosecutor for protection of legality, the Supreme Court issued final decisions in favour of the Applicant and therefore, this part of the Applicant's Referral remains moot.

Whereas regarding the other part of the Applicant's Referral, the Court ascertained that it is premature because the procedure at the regular courts was pending and there was no final decision. The Referral was declared inadmissible due to non-exhaustion of legal remedies. Moreover, the request for interim measure was rejected.

RESOLUTION ON INADMISSIBILITY
in
Joined Cases
Nos. KI48/14 and KI49/14
Applicant
Municipality of Vushtrri
Constitutional Review of the Decisions of the Basic Court in Mitrovica-Branch in Vushtrri:
(1) CP No. 46/14, of 6 March 2014,
(2) CP No 49/14, of 6 March 2014,
(3) CP 53/14, of 6 March 2014,
(4) CP No. 52/14, of 11 March 2014,
(5) CP No. 54/14, of 11 March 2014
and
Decision Ac. No. 1369/14, of the Court of Appeal of Kosovo,
of 27 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by the Municipality of Vushtrri (hereinafter: the Applicant), represented by the legal representative Mr. Idriz Muzaqi.

Challenged Decisions

2. In the joined Referral, the Applicant challenges these decisions rendered in the executive proceedings by the Basic Court in Mitrovica-Branch in Vushtrri hereinafter: the Basic Court), Decision CP. No. 46/14, Decision CP. No. 53/14, Decision CP. No. 49/14, of 6 March 2014, Decision CP. No. 52/14, and Decision CP No. 54/14, of the same court, of 11 March 2014. By the submission for extension of Referral, the Applicant also challenged Decision Ac. No. 1369/14, of the Court of Appeal of Kosovo, of 27 June 2014, which upheld the challenged Decision CP. No. 53/14, and which he received in the meantime.

Subject Matter

3. The subject matter of the Referrals is the constitutional review of 5 (five) abovementioned Decisions rendered in the executive proceedings by the Basic Court in Mitrovica, and the Decision of the Court of Appeal of Kosovo, which allegedly violated the Applicant's rights

guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), under Article 31 (Right to Fair and Impartial Trial) and Article 102.5 (General Principles of Judicial System-Right to Appeal).

4. The Applicant claims, *inter alia*, that each decision was rendered in breach of "*... Article 102 paragraph 5 of the Constitution of the Republic of Kosovo, because the Municipality was denied the right to appeal in out contentious procedure*".

5. The Applicant has requested the Constitutional Court to impose interim measure in that part of the Referral where the decisions in the executive proceedings were final, requesting suspension of execution of Decision Ac. No. 1369/14, of the Court of Appeal of Kosovo, of 27 June 2014.

Legal Basis

6. The Referral is based on Article 113.7 and 21.4 of the Constitution, Articles 22, 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

7. On 14 March 2014, the Applicant submitted two Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which were registered under the following numbers: KI48/14 and KI49/14.

8. On 24 April 2014, the Court informed the Applicant about the registration of the Referrals KI48/14 and KI49/14 and sent the copies of the Referrals to the Basic Court in Mitrovica.

9. On 16 May 2014, the President of the Court ordered the joinder of the Referral KI48/14 to the Referral KI49/14. By this order, it was decided that the Judge Rapporteur and composition of the Review Panel be the same as it was decided by Decision No. KSH. KI49/14.

10. On 22 May 2014, the Court informed the Applicant and the Basic Court in Mitrovica-Branch in Vushtrri about the joinder of the Referrals.

11. On 25 June 2014, the Court requested the Applicant for additional information regarding the Referrals KI48/14 and KI49/14. In the letter, the Court, *inter alia*, asked the Applicant "*Whether the Municipality of Vushtrri has appealed against the challenged decisions*."

12. On 3 July 2014, the Court received the copies of the appeals against the five challenged decisions submitted by the Applicant to the Court of Appeal of Kosovo.

13. On 29 July 2014, the Applicant extended the part of the referral KI48/14, by Decision Ac. no. 1369/14, of the Court of Appeal of Kosovo, of 27 June 2014.

14. On 3 October 2014, the Court informed the Court of Appeal of Kosovo about the extension of the part of the Referral KI48/14, and sent a copy of the Referral to this court.

15. On 20 October 2014, the President of the Court, by Decision appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Altay Suroy and Snezhana Botusharova.

16. On 21 October 2014, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur.

17. On 15 April 2015, the Court approved by majority of votes the request of Judge Arta Rama-Hajrizi for recusal from deciding regarding this Referral, as the requirements under Article 18 of the Law on the Constitutional Court, have been met.

18. On 26 June 2015, the mandate in the Court ended to judges Enver Hasani and Kadri Kryeziu and considering the decision on withdrawal of a judge from the case, the Court could not proceed further with the Referral due to lack of quorum provided for in Article 19.2, of the Law.

19. On 30 December 2015, the President of Kosovo decreed the judges: Gresa Caka-Nimani and Selvete Gërxhaliu-Krasniqi, therefore the legal requirements for the continuation of the process of reviewing the request were met.

20. On 21 January 2016, the Court requested the Municipal Court of Vushtrri to notify the Court of any possible changes regarding the status of the Referrals, as well as to send to the Court the additional documents, if it possesses such documents.

21. On 5 February 2016, the Court received a written response from the Municipality and also the copies of new court decisions regarding the cases.

22. On 15 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

23. On 10 October 1986, the Municipal Assembly of Vushtrri rendered the Decision on the declaration of general interest for the expropriation of three cadastral parcels (i.e. parcels No. 2238/2, 2239/2 and 2240/2 located in the Cadastral Municipality Vushtrri) for the construction of a new bus station for the needs of BOAL "Kosovatrans".

24. In 1987 (unspecified date) BOAL "Kosovatrans" informed the Municipal Directorate for Property Matters that they had ensured the financial means for monetary compensation to the previous owners of the expropriated land. Based on that, the Municipal Directorate issued a Decision concerning the amount of compensation.

25. Dissatisfied with the amount of compensation, the previous five owners (i.e. SH. P., F. P., T. P., A. P. and B. ZH.), initiated the non-contentious proceedings before the Municipal Court in Vushtrri, with a request to determine the amount of compensation, in accordance with the applicable Law on Non-Contentious Procedure.

26. While the case was pending before the Municipal Court in Vushtrri, the war in Kosovo broke out. The premises of the Municipal Directorate for Property Matters in Vushtrri were set on fire and the Municipal Court's case file was, according to the Applicant, transferred to Kraljevo, Republic of Serbia.

27. Following the request of the previous owners, on 14 September 2005, the Municipal Court in Vushtrri rendered the Decision No. 344/2005 and ordered the restoration of the case file to the Municipal Court in Vushtrri (Case No. 579/1989).

28. On 13 January 2006, the Municipal Court in Vushtrri rendered Decision No. 344/2005 with regard to the request for compensation for expropriated property of the five previous owners, granting the requests to three of the owners (i.e. F.P., T.P. and A.P.), in relation to the counter proposer, TE "Kosovatrans", whereas for two of them, SH.P and B. ZH., the Court decided that pursuant to Article 333, paragraph 2 of the Law on Contested Procedure, to reject their request because their case has already been decided by the Decision of the Supreme Court of Serbia, because these two Applicants continued with the court procedures also in the then courts. However, these two Applicants are instructed to request compensation for the expropriated land in the enforcement procedure.

29. By the abovementioned decision it was determined that TE "Kosovatrans" was responsible for compensating these three previous owners of immovable property (F. P., T. P. and A. P.), and in the decision, the Court determined the real monetary amount that should be compensated to the former owners.

30. By the same decision, the request of the three previous owners (F. P., T. P. and A. P.) with regard to the Applicant (the Municipality) was rejected. It was stated that "*as to the counter proposer, the Municipality of Vushtrri... the proposal of F. P., T. P. and A. P. is rejected as ungrounded, since it [i.e. the Municipality] lacks passive legitimacy*".

31. The counter proposers, TE "Kosovatrans" and Kosovo Trust Agency (that administered this company at the time), filed an appeal against Decision No. 344/2005, of 13 January 2006.

32. The Municipality of Vushtrri did not appeal, since it was stated that the Municipality did not have the status of a party in the proceedings.

33. On 5 December 2013, the Court of Appeal of Kosovo rendered Decision Ac. No. 490/2012 and "*rejected as out of time (belated) the appeal of the counter proposer TE 'Kosovatrans' in Vushtrri and Kosovo Trust Agency, against the Decision of the Municipal Court in Vushtrri, No. 344/2005, of 13 January 2006*."

34. Following this decision, the five previous owners initiated executive proceedings before the Basic Court. They all requested execution against the Applicant, the Municipality of Vushtrri, and not against TE "Kosovatrans".

35. The Municipal Court in Vushtrri, by Decisions CP. no. 46/14, CP. no. 49/14, CP. No. 52/14, CP. no. 53/14 and CP. no. 54/14, allowed execution of all proposers.

36. Against all decisions the Applicant filed individually the objection with the Basic Court.

37. On 6 March 2014, namely on 11 March 2014, the Basic Court rejected as ungrounded the Applicant's objections.

38. On 17 March 2014, the Applicant filed appeals with same appealed allegations with the Court of Appeal against five decisions, by which its objections were rejected due to violation of provisions of material acts and procedural provisions.

39. The Court of Appeal, based on the Applicant's appeals, on identical legal issues rendered different decisions: in case CP. no. 53/14 and CP. no. 54/14 rejected the Applicant's appeals and upheld the decisions of the of first instance court, in cases CP. no. 46/14, CP. no. 49/14 and CP. no. 52/14, quashed the decisions of the first instance and remanded the case for retrial.

40. Against Decisions Ac. no. 1365/14 and Ac. no. 1369/14, of the Court of Appeal, which rejected the appeals of the Municipality and the decisions of first instance court (CP. No. 53/14 and CP. No. 54/14) were upheld, the Applicant submitted a proposal for protection of legality to the State Prosecutor's Office.

41. On 22 December 2014, the Supreme Court of Kosovo by Decision CML. no. 3/14 in the proceedings initiated for the protection of legality has decided to modify Decision Ac. no. 1369/14, of the Court of Appeal, and Decision CP. no. 53/14, of the Basic Court in Mitrovica, by rejecting as ungrounded the creditor's claims.

42. On 22 December 2014, the Supreme Court of Kosovo by Decision CML. no. 4/14 decided to modify Decision Ac. no. 1365/14, of the Court of Appeal, and Decision CP. no. 54/14, of the Basic Court, by rejecting as ungrounded the creditor's claims.

43. The Supreme Court, in its decisions, referring to the decisions of the first and second instance courts, in the execution procedure stated *inter alia*: *"Setting from such a state of the case, the Supreme Court cannot accept such a legal conclusion of the courts of lower instance as fair and lawful, since according to the assessment of this court, the courts of lower instance have erroneously applied the provisions of procedural and substantive law and the challenged decisions had to be modified."*

44. On 5 February 2016, the Applicant officially informed the Court that the case regarding the Decision CP. no. 52/14 is pending before the Court of Appeal upon the appeal of the creditor, the case CP. no. 46/14 is for the second time before the Court of Appeal, upon the Applicant's appeal, and the case regarding the decision CP. no. 49/14, is in reconsideration before the first instance court.

Applicant's Allegations

45. With regard to all the challenged decisions, the Applicant alleges that *"upon deciding matter in the executive procedure, the Court committed essential violations of the material provisions and that 1) violation of Article 102.5 of the Constitution of the Republic of Kosovo because the Municipality was denied the right to appeal in non contentious procedure"*.

46. The Applicant further alleges that with regard to all challenged decisions there have been violations of provisions of the Law on Expropriation, the Law No. 03/L-087 on Publicly Owned Enterprises, UNMIK Regulation no. 2000/45 on Local Self-Government of Municipalities in Kosovo, the Law on Executive Procedure and the Law on Contested Procedure.

47. However, the Applicant alleges that there was inconsistency in decision-making, as the courts in identical cases and with the same subject matter, had decided differently, once approving and once rejecting the appeals.

Admissibility of the Referrals

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

49. In this respect, the Court refers to Article 113.7 of the Constitution, which provides that:

> *"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*
>
> and
>
> Article 21.4 of the Constitution which provides that
>
> *"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable".*

50. 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".*

51. The Court also takes into account Rule 32 of the Rules of Procedure, which provides:

> *"The Court may dismiss a referral when the Court determines a claim to be ... does not otherwise present a case or controversy and there is no special circumstance in respect to human rights and or public interest for the Court to review the case.***".**

52. The Court considers that the Applicant challenged the decisions of the Basic Court such as Decision CP. no. 46/14, Decision CP. no. 53/14, and Decision CP. no. 49/14, of 6 March 2014, and Decisions CP. no. 52/14 and CP. no. 54/14, of the same Court, of 11 March 2014, and Decision Ac. no. 1369 of the Court of Appeal.

53. The Court finds that the complexity of the case, continuous additional documents, which the Court received after the submission of the Referral, the ongoing conduct of other court proceedings at a time when the Referral was in this Court, and which necessarily have implications in the constitutional adjudication of this case and the issues of objective nature related to the Court, have an direct impact on the time limit of rendering final decision. In this regard, the Court notes that twice in a row on 14 and 15 April 2015, the Court reviewed the Referral without being able to render a final decision for the reasons mentioned above.

54. The documentation submitted to the Court after the Referral was registered, but still before the Court rendered a final decision and the use of extraordinary legal remedies (in this case defined as effective remedies) while the Referral was pending, which significantly changed the legal nature of the cases compared to the initial stage and the Court must consider and examine these decisions as an integral part of the Referral.

55. The Court notes that, as regards the questions raised regarding the cases CP. 53/14 and CP. 54/14, in the proceedings initiated by the State Prosecutor for protection of legality, the Supreme Court, by decisions CML. no. 3/14 and CML. no. 4/14, of 22 December, 2014, concluded that they were decided by a final decision in favor of the Applicant and therefore, there is no reason for which the request was filed and, consequently, nor the merits of the case to be reviewed.

56. In this regard, the Court notes that the European Convention on Human Rights, which in Article 22, paragraph 1, item 2, of the Constitution of Kosovo is directly applicable in the Republic of Kosovo, in the relevant applicable part in this case provides as following:

Article 37
Striking out applications

1. "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

...

b. the matter has been resolved...".

57. As a general procedural principle, the Court should not render decisions in cases where the case does not exist and the case remains moot. The Court does not deal with hypothetical or academic cases. This is universally recognized principle of the conduct of courts and is analogous to the principle of judicial self-restraint.

58. In addition, the Court has already found (in Case KI11/09, Decision of 30 May 2011, paragraph 46, and cases KI58/66 and KI94/12, Constitutional review of decisions of the Municipality of Mitrovica, Gjilani and Vitia on conditioning of municipal services to citizens) that *"The concept of mootness is well recognised legal concept. It can arise where a case in an abstract or hypothetical issue, presents itself for decision by a Court. There are good grounds for a Court not to dealing with hypothetical situations. Without a real, immediate or concrete issue to be decided upon the Court"* Any decision that the Court would now render in relation to this Referral will have no practical effect.

59. Considering the decisions of the Supreme Court related to the challenged decisions, CP. no. 53 and CP. no. 54/14, and modification of these decisions, the Court concludes that the Applicants do not have case any more for this part of the Referral or unresolved matter and, in relation to this part of the Referral, all the requirements are met that in accordance with Rule 32 of the Rules of procedure, it is dismissed.

60. By further consideration of the Referral, the Court notes that the proceedings regarding the three cases are still pending before the regular courts:

case CP. no. 46/14, before the Court of Appeal
case CP. no. 49/14, before the Court of Appeal and
case CP. no. 52/14, , before the Basic Court
and there is still no final decision on these cases.

61. The Court also recalls that in accordance with the principle of subsidiarity, the Applicant is under the obligation to exhaust all legal remedies provided by the law, as stipulated by Article 113.7 and the other legal provisions, mentioned above.

62. 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 shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see, among other, Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, Case KI24/11, Constitutional review of Judgment Ac. no. 593/2010, of District Court in Prizren, of 20 January 2011 and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

63. Therefore, with regard to the three above-mentioned decisions the Applicant has failed to exhaust all legal remedies available, as the proceedings before the Municipal Court and/or Court of Appeal are still pending.

64. It follows that, a part of the Referrals related to these cases (CP. no. 46/14, CP. no. 49/14 and CP. nr. 52/14) is premature and is to be declared inadmissible.

65. In such circumstances of the case, when a part of the Referral should be rejected because it is moot and the other part is premature, the Court finds no reason to assess the alleged violations of the Constitution, because for the first two challenged decisions, even if there were such violations, they have been corrected by the final decisions of the Supreme Court and, for other three decisions, while the procedures are pending, the Court cannot assess the possible existence of the alleged violations because it assesses the process as a whole.

Interim measures

66. As mentioned above, the Applicant requests the Court to impose interim measure for the Referral KI48/14, related to the suspension of the challenged Decision Ac. no. 1369/14, of the Court of Appeal, of 27 June 2014, because *"the enforcement of Decisions of the Basic Court in Mitrovica-Branch in Vushtrri and of the Court of Appeal of Kosovo respectively could cause unrecoverable damage and also jeopardize the public interest"*.

67. Regarding this request, the Court notes that the part for which the Applicant has requested the imposition of the interim measure, has already been adjudicated by the abovementioned decisions of the Supreme Court and the merits of the case no longer exist and, therefore nor the reason for interim measure. Therefore, as such, the request must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47.2 of the Law and Rule 32 of the Rules of Procedure, on 15 March 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the Referral KI48-49/14 (regarding Decisions: CP. No. 53/14);

III. TO DECLARE the Referral KI48-49/14 (regarding Decisions: CP. No. 46/14, CP. no. 49/14 and CP. No. 52/14) as premature;

IV. TO REJECT the request for Interim measure;

V. TO NOTIFY this Decision to the Parties;

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

VII. This Decision effective immediately.

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

KI93/15, Applicant: Ahmet Tërnava, constitutional review of Judgment Rev. no. 12/2015, of the Supreme Court of Kosovo, of 4 February 2015

KI93/15, resolution on inadmissibility of 14 April 2016, published on 18 May 2016

Keywords: *individual referral, right to fair and impartial trial, manifestly ill-founded.*

In 2003, the Applicant filed a claim with the Municipal Court in Prishtina for reinstatement to his former working place. In this court proceedings, in the capacity of a respondent was Kosovo Energy Corporation, the coal mine company "Kosova".

The dispute was completed by the Judgment of the Supreme Court, which found that KEK cannot be a party to the proceedings, because it does not have passive legitimacy.
The Applicant alleges in his Referral that the regular courts violated his right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of ECHR. However, the Applicant did not explain how and why his right to fair and impartial trial was violated.

The Court concluded that the Judgment of the Supreme Court is reasoned and fully explains why it found that the lower instance court has correctly determined that KEK in capacity of a respondent does not have passive legitimacy. Therefore, having examined all the proceedings, the Court found that the proceedings before the regular courts have not been unfair or arbitrary. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI93/15
Applicant
Ahmet Tërnava
Constitutional review of Judgment Rev. no. 12/2015, of the Supreme Court, 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Ahmet Tërnava from village Lismir, the Municipality of Fushë Kosovë (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Judgment Rev. no. 12/2015, of the Supreme Court, of 4 February 2015.

3. The Applicant was served with the challenged Judgment on 20 March 2015.

Subject matter

4. The subject matter is the constitutional review of the abovementioned Judgment of the Supreme Court, which allegedly violated the Applicant's right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (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 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 10 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 19 August 2015, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur, and the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.

8. On 14 September 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 14 September 2015, the Court requested the Basic Court in Prishtina to submit the copy of the letter of the receipt, indicating the date when the Applicant was served with the Judgment Rev. no. 12/2015, of the Supreme Court, of 4 September 2015.

10. On 3 March 2016, the Court received the copy of the letter of the receipt requested from the Basic Court in Prishtina, showing that the abovementioned Judgment of the Supreme Court was served on the Applicant on 20 March 2015.

11. On 14 April 2016, 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

12. The Applicant had an employment relationship as an electrician in the open cast mine, the former Elektroekonomia (hereinafter: the Employer).

13. On 11 August 1993, on the grounds that the Applicant caused damage in the workplace, the Disciplinary Commission of the Employer issued the decision on termination of employment relationship. Against the decision of the Disciplinary Commission, the Applicant filed an appeal with the Appeals Commission.

14. On 8 September 1993, the Appeals Commission rejected the Applicant's complaint as ungrounded and upheld the Decision of the Disciplinary Commission.

15. On 20 March 1996, the Municipal Court in Prishtina (Judgment, K. no. 2137/94), acquitted the Applicant of the charge for the damage caused at his workplace.

16. Based on the case file, in 2003, the Applicant filed a claim with the Municipal Court in Prishtina for reinstatement to his former working place. In this court procedure, in the capacity of a respondent was Kosovo Energy Corporation, the coal mine company "Kosova" (hereinafter: KEK).

17. On 4 July, 2005, the Municipal Court in Prishtina (Judgment, C1. No. 36/03) approved the claim of the Applicant, annulled as unlawful the decisions of two disciplinary authorities of the employer and obligated KEK to reinstate the Applicant to the previous job position.

18. KEK filed the appeal with the District Court in Prishtina against the abovementioned judgment of the Municipal Court, alleging violation of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.

19. On 7 December 2006, the District Court in Prishtina (Judgment Ac. No. 62/2006), rejected as ungrounded the appeal of KEK and upheld the Judgment of the Municipal Court in Prishtina.

20. KEK submitted a revision to the Supreme Court against the Judgment of the District Court in Prishtina, alleging fundamental violation of the Law on Contested Procedure and erroneous application of the substantive law.

21. On 15 May 2008, the Supreme Court (Decision Rev. no. 61/2007) approved the KEK revision, quashed the Judgment of the District Court in Prishtina and of the Municipal Court and remanded the case for retrial to the first instance.

22. The Supreme Court reasoned its decision on remanding the case for retrial, concluding that the courts of lower instance courts due to erroneous application of the substantive law did not correctly determine the factual situation. In this regard, the Court found that the lower instance courts did not take into account KEK allegations on application of the substantive law namely, KEK Regulation regarding the Application on employment relationship. This Regulation recognized the employment relationship to former workers of Elektroekonomia whose employment relationship was terminated on any grounds. Under this Regulation the employees were invited to show up at workplace by 1 July 2000 the latest. According to the Supreme Court, the Applicant did not use this right, by not appearing at his workplace within the deadline.

23. On 15 December 2011, in the repeated proceedings, the Municipal Court in Prishtina (C1. No. 268/08) rejected as ungrounded the claim of the Applicant, by which he requested the annulment of the Employer's decisions of 1993 and compensation for unpaid salaries for the period from 10 March 1993 until 11 March 2009.

24. The Municipal Court in Prishtina found that on 6 October 2000, KEK was registered in the provisional business register with UNMIK. This Court, further concluded that: *"the fact that the Kosovo Energy Corporation (KEK) which was established and registered after the end of the war in Kosovo, in the same assets possessed by former Elektroekonomia of Kosovo, with HQ in Prishtina and then in the former Elektroekonomia of Serbia, does not mean that the latter is the successor to the Public Company "Elektroekonomia of Serbia"."*

25. Thus, the Municipal Court in Prishtina found that KEK is not responsible for the damage caused to the claimant and accordingly, it has no obligation to compensate the lost personal income, specified in his claim.

26. The Applicant filed an appeal against the Judgment of the Municipal Court, alleging violation of procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.

27. On 8 July 2014, the Court of Appeal (Judgment, CA. no. 4228/12) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Municipal Court in Prishtina.

28. The Court of Appeal in its Judgment confirmed the stance of the Municipal Court in Prishtina, by concluding that the Applicant "*[...] did not prove until the end of the main hearing of this matter, nor in the procedure upon the appeal that the respondent* [KEK] *has no real passive legitimacy in this legal matter [...].*"

29. Against the Judgment of the Court of Appeal, the Applicant submitted a revision to the Supreme Court, alleging violation of the contested procedure provisions and erroneous application of the substantive law. In addition, the Applicant alleged that KEK was a successor of former Elektroekonomia and, because of this, is obliged to pay him the compensation for the termination of his employment relationship.

30. On 4 February 2015, the Supreme Court (Rev. no. 12/2015) rejected the Applicant's revision as ungrounded.

31. In its judgment, the Supreme Court held that the Court of Appeal correctly assessed that KEK cannot be a party to the proceedings because it does not have passive legitimacy.

32. Therefore, the Supreme Court found as inadmissible the Applicant's allegations that KEK, as a successor of the former Elektroekonomia, inherited the obligations in relation to former employees of the former Elektroekonomia. Finally, the Court found that KEK is not a successor of the former Elektroekonomia, and, consequently, "*it cannot take over any obligation arising from the employment relationship of the employee of the former Publicly Owned Enterprise [...]*".

Applicant's allegations

33. The Applicant alleges in his Referral that the regular courts violated his right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of ECHR. However, the Applicant did not explain how and why his right to fair and impartial trial was violated.

34. In addition, the Applicant addresses the Court with the following request: *"to assess the legal matter that KEK has passive legitimacy and that it should be liable for the obligations of the legal entity – Elektroekonomia of Kosovo later changed its name to Elektroekonomia of Serbia, and after the war in Kosovo Energy Corporation."*

35. Finally, the Applicant requests the Court to annul the judgments of the Supreme Court (Rev. 12/2015, of 4 February 2015), of the Court of Appeal (Ca. no. 4228/2012, of 8 July 2014) and of the Municipal Court in Prishtina (C. no. 268/2008, of 15 December 2011) and the case be remanded for retrial.

Admissibility of the Referral

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

37. In this regard, Article 113 paragraph 7 of the Constitution, states:

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

38. The Court notes that the Applicant is an authorized party under the Constitution, he challenges an act of a public authority, namely the Judgment of the Supreme Court, that he has exhausted necessary legal remedies and has submitted his referral within a period of 4 (four) months after being served with the judgment.

39. The Court also refers to 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 public authority is subject to challenge".

40. In addition, the Court should assess whether the Applicant fulfilled the requirements under 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;

[...]

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

41. The Court recalls that the Applicant alleges that the regular courts have violated his right to fair and impartial trial.

42. In this case, the Court notes that the Applicant merely states that there has been a violation of constitutional right to fair and impartial trial, without explaining how and why the facts presented by him constitute a violation of his constitutional right invoked by him.

43. The Court notes that the Supreme Court held that the Court of Appeal correctly assessed that KEK in capacity of a respondent cannot be a party to the proceedings because it has no passive legitimacy. The Supreme Court had concluded that KEK is not a successor of the former Elektroekonomia and accordingly, it has no obligation towards the Applicant for payment of compensation due to termination of employment relationship by the former Elektroekonomia.

44. Therefore, the Court notes that the Judgment of the Supreme Court is reasoned and fully explains why it found that the lower instance court has correctly determined that KEK in capacity of a respondent does not have passive legitimacy. Having examined all the proceedings, the Court found that the 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).

45. Therefore, the Court considers that the challenged judgment of the Supreme Court contains all necessary reasons on which it is based, in accordance with the requirements of Article 31 of the Constitution and Article 6 of the ECHR.

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

47. Finally, the Court reiterates that the Applicant has not filed any compelling argument to establish that the alleged violations mentioned in the Referral represent violations of his right to fair and impartial trial (See case *Vanek v. Republic of Slovakia,* No. 53363/99, ECHR, Decision of 31 May 2005).

48. 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 right to fair and impartial trial and that the Applicant has not sufficiently substantiated his claim.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure, in the session held on 14 April 2016, 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

KI132/15, Applicant Visoki Decani Monastery, Request for Constitutional Review of two Decisions of 12 June 2015, No. AC-I-13-0008 and No. 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, Judgment of 19 May 2016, published on 20 May 2016

Key words: individual referral, admissible referral, res judicata, right to fair and impartial trial, protection of property.

Appellate Panel of the Special Chamber had decided on a property contest between the Applicant and third parties in favour of the Applicant and this Decision became final, *res judicata*. In the meantime, third parties filed an appeal with the Appellate Panel which admitted the Appeal of the third parties and ascertained that the Appeal was grounded; it annulled previous decisions on that case and ascertained that the Special Chamber was not competent for adjudicating that case. The Applicant complained at the Constitutional Court, mainly for violation of principle *res judicata* by the Appellate Panel, none of the third parties had the right to appeal since at the highest instance they were declared as persons who were not authorized in the procedure and that the Appellate Panel did not have the right to consider their submissions.

The Constitutional Court firstly assessed previous procedural matters of this case including its background. The Constitutional Court secondly assessed the case on its merits in which occasion, among others, it ascertained that the Appellate Panel violated the principle of judicial security and denied to the Applicant a fair and impartial trial because it used the appeal procedure to annul previous decisions and it had referred the original contest of property again to the regular courts. The Court concluded that there was a violation of the Applicant's right to a fair and impartial trial as guaranteed by Article 31, paragraph 2, of the Constitution in conjunction with Article 6, paragraph 1, of the ECHR.

JUDGMENT
in
Case No. KI132/15
Applicant
Visoki Dečani Monastery
Request for constitutional review of two Decisions of 12 June 2015, No. AC-I-13-0008 and No. 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, 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 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 of Rights] 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 requested 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 21.4, 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 2015, the 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 specified 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, by Decision ref. no. VMP865/15, published on 03 December 2015, the Court unanimously granted an interim measure, namely that any judicial decisions, actions or decisions of public authorities in relation to this constitutional complaint be suspended, and that this interim measure shall run until 29 February 2016.

12. On 25 January 2016, the legal representative of the Socially-Owned Enterprises (SOE) Iliria and APIKO (hereinafter: "Iliria" and "APIKO"), filed a request with the Court in which he sought an opportunity to submit comments on the Referral of the Applicant.

13. On 02 February 2016, the Court responded to the legal representative of "Iliria" and "APIKO" and provided him with the opportunity to submit comments on the Referral, giving him a deadline until 16 February 2016.

14. On 10 February 2016, by Decision ref. no. VMP889/16, published on 12 February 2016, the Court unanimously granted an extension of the interim measure in order to allow for the submission of additional comments on the Referral. The Extension of the Interim Measure stated that any judicial decisions, actions or decisions of public authorities in relation to this constitutional complaint be suspended, and that the extension of this interim measure shall run until 31 May 2016.

15. On 16 May 2016, three months after the deadline, the Court received comments on the referral submitted by the legal representative of the SOEs "Iliria" and "APIKO". The Court cannot take these comments into account because they were submitted three months after the expiry of the deadline, and the legal representative of the SOEs never requested an extension of the deadline.

16. On 19 May 2016, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral admissible and to find a violation.

17. On 19 May 2016, the Court approved by majority the admissibility of the Referral. Judge Bekim Sejdiu voted against admissibility.

18. On the same date, the Court voted by majority to find a violation. Judge Bekim Sejdiu voted against the finding of a violation.

19. The Judgment may be complemented by concurring opinions.

Summary of the Facts

20. On 28 June 1946, based on Paragraph 2, Article 18, of the Law on Agrarian Reform and Internal Colonization of Serbia, the "*District National Committee for Kosovo and Metohija*" with its seat in Prizren, of the then Socialist Federal Republic of Yugoslavia, enacted Decision No. 2649, expropriating from the Applicant several parcels of land.

21. On 5 November 1997, the Government of the Republic of Serbia entered into an Agreement of Gift No. 04 br. 464-2914-97 with the Applicant. With this Agreement of Gift, a portion of the expropriated land was returned to the Applicant and registered in the cadastre under the number 464-2914/97.

22. On 26 April 2000, the SOEs "Iliria" and "APIKO" 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 Agreement of Gift of 5 November 1997.

23. 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.

24. In 2008, the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters (hereinafter: the Special Chamber) was seized with two cases related to the property in question. One case concerned the claims of SOE "APIKO", represented by the KTA, and filed under number SCC-08-0226. The other case concerned the claims of SOE "Iliria", represented by the KTA, and registered under number SCC-08-0227.

25. On 17 November 2008, the Special Chamber held its first sessions on these two cases, with the KTA representing the claimant parties "APIKO" and "Iliria"', and the Republic of Serbia, the Municipality of Deçan/Dečane, and the Applicant, appearing as respondent parties in both cases.

26. On 24 November 2008, in the proceedings before the Special Chamber, the KTA submitted a proposal for exclusion of the Republic of Serbia and the Municipality of Deçan/Dečane as respondents in the proceedings. The Municipality of Deçan/Dečane and the Republic of Serbia both agreed to this exclusion, leaving the Applicant remaining as the only respondent party.

27. The Municipality of Deçan/Dečane, by special submission, requested the Special Chamber to allow it to remain involved in the two cases, but now on the side of the claimant. The Special Chamber did not accept this request. With the rejection of this request the Municipality of Deçan/Dečane was removed as a party in the proceedings.

28. On 26 November 2008, the authorized representative of "Iliria" and "APIKO" filed a submission requesting the Special Chamber to determine that the KTA was not authorized to represent these two Enterprises, claiming that it did not have legal legitimacy, and, furthermore, it was not, in fact, representing the Enterprises in accordance with their interests.

29. On 10 March 2009, the Trial Panel of the Special Chamber (hereinafter: the Trial Panel) ruled in Decision No. SCC-06-0484, that:

> *"a) the Office of Legal Affairs of UNMIK has the legal standing in this case as representing the KTA;* and
>
> *b) it has the sole right to represent the interests of Iliria and APIKO before the Special Chamber in particular in this case."*

30. In May 2009, the Trial Panel invited the Privatization Agency of Kosovo (hereinafter: PAK) to participate in the proceedings as potential interested party due to any eventual interest it might have in this case.

31. On 12 May 2009 the KTA (represented by the Office of Legal Affairs of UNMIK) filed a submission with respect to both cases, SCC-08-0226 and SCC-08-0227, and made application for a hearing. In the submission it stated that the KTA recognized that the Applicant had full ownership rights over the disputed cadastral parcels, which were located in the Special Protective Zone established by UNMIK Executive Decision No 2005/05, and that the KTA would waive, on behalf of the claimants in the cases, any other property rights claims that they might have in relation to these parcels. The Trial Panel did not accept this settlement as it was not in the appropriate form which the Trial Panel required for its decision.

32. On 19 May 2009, at the hearing on both cases, SCC-08-0226 and SCC-08-0227, in the presence of the Trial Panel, the KTA (represented by the Office of Legal Affairs of UNMIK) and the Applicant signed a settlement according to which the claimant (KTA) recognized to the Respondent (the Applicant) the ownership over the parcels in question in the disputes with "Iliria" and "APIKO", while the Respondent (the Applicant), as a sign of a good will, gave two parcels of immovable property in the centre of the town of Deçan/Dečane, to the Municipality of Deçan/Dečane as a gift.

33. On an unspecified date, the Privatization Agency of Kosovo (PAK) submitted an appeal against this decision, claiming that it was the only authorized representative of the two

SOEs, while the KTA (represented by the Office of Legal Affairs of UNMIK) was not authorized.

34. On 24 July 2010, by Decision No ASC-09-0025, the Appellate Panel of the Special Chamber (hereinafter: the Appellate Panel) rejected the appeal of PAK and confirmed the decision of the Trial Panel dated 10 March 2009, regarding the confirmation that the Office for Legal Affairs of UNMIK had the legal standing in this case as representing the KTA.

35. On 1 January 2012, the new Law No 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters entered into force by which Specialized Panels of the Special Chamber were established. The two cases regarding the Applicant's property were assigned to the Specialized Panel for Ownership Claims of the Special Chamber (hereinafter: the Ownership Panel).

36. On 16 October 2012, in accordance with the request of the Office for Legal Affairs of UNMIK and following the opinion of the Appellate Panel, the Ownership Panel held a hearing. The parties, the KTA (represented by the Office of Legal Affairs of UNMIK) and the Applicant, as determined in the Appellate Panel Decision of 24 July 2010, were summoned to this hearing. The parties were ordered to provide the Court with documents confirming their authority to represent the parties in reaching the alleged settlement.

37. On 27 December 2012, the Ownership Panel ruled in two Judgments, No. SCC-08-0226 and No SCC-08-0227, with identical text, rejecting the claims as ungrounded. Regarding the question of authorized parties to the claim, the Ownership Panel stated that:

> *"In another decision of the Appellate Panel, dated 27 December 2011, case no ASC-11-0038, in the appeal against the decision of the Trial Panel dated 9 February 2011 in cases SCC-08-0226 and SCC-08-0227, it is reiterated that the representation of the SOE by KTA and Office of the Legal Affairs of UNMIK is final and therefore binding and not be questionable anymore and even to be considered as* res judicata *by the Appellate Panel. At the time of issuance of that Decision, the new Law on PAK No 04/L-034 was already in force.*
>
> *It is not relevant whether the current composition of the Specialized Panel [on Ownership] agrees with that conclusion or not. The final Decisions are binding not only on parties but also on all Courts unless a new Law regulates the field differently after the adoption of such final Decision on a procedural matter. The predictability and legal certainty principles require that the final decisions/judgments cannot be challenged further, no matter they are correct or not, unless an extraordinary remedy is available (which is still subject to specific time limit). There is no evidence or notification in the file indicating that any party or third person claiming to have an interest in this case has challenged the constitutionality of the Decisions of the Appellate Panel or applied for extraordinary remedies in this particular case at hand.*
>
> *In the case at hand, the Appellate Panel, in its Decision dated 24 July 2010, made its determination on that it is the Office of the Legal Affairs of UNMIK that has the sole right to represent the SOE when the Law on PAK and the Constitution of Republic of Kosovo were already in force. [...]"*

38. On 23 January 2013, PAK filed an appeal with the Appellate Panel against the two Judgments No. SCC-08-0226 and No. SCC-08-0227. In its appeal, PAK stated that the ownership claims of the Applicant were based on discriminatory practices and that the KTA was not authorized, nor competent to represent the enterprises "APIKO" and "Iliria".

39. On 24 January 2013, the legal representative of both "Iliria" and "APIKO" filed an appeal against Judgments Nos. SCC-08-0226 and SCC-08-0227. The appeal stated that the KTA was not authorized to represent the Enterprises, that the Enterprises were represented in contradiction with their interests, that the ownership claims of the Applicant were based on discriminatory practices. .

40. On 29 January 2013, the Municipality of Deçan/Dečane also filed an appeal against the Judgments No. SCC-08-0226 and No. SCC-08-0227. It stated that it was unjustly excluded from the proceedings, as it had a legal interest over the land, and that the KTA was not authorized to represent the Enterprises.

41. In each of its responses to these three appeals, the Applicant reiterated that: (1) the decision on authorized representatives had been decided in final instance and was a matter of *res judicata* by the Appellate Panel; (2) none of the appellants were entitled to appeal since they had in final instance been declared as persons who were not authorized parties to the proceedings; and (3) the Appellate Panel did not have the right to review their submissions.

42. On 12 June 2015 the Appellate Panel rendered two final decisions with identical text, No. AC-I-13-0008 and No. AC-I-13-0009, deciding that:

    a. the appeals were grounded;
    b. the Judgments of the Ownership Panel Nos. SCC-08-0226 and SCC-08-0227 were annulled; and
    c. the Special Chamber was not competent to adjudicate this case.

43. In accordance with this conclusion, the Appellate Panel then remanded the case and the issues in dispute to the Basic Court in Pejë/Peć - Branch in Deçan/Dećani.

44. In its decision, the Appellate Panel stated that the appeals of the appellants were grounded and that the Special Chamber is not competent to adjudicate this matter, because none of the respondent parties in the case came within the definition of authorized respondent parties in claims before the Special Chamber as defined by UNMIK Reg. 2002/13 as amended by UNMIK Reg. 2008/4. Specifically, the Appellate Panel made a different interpretation of the meaning of the provisions contained in Articles 4 and 5 of UNMIK Reg. 2002/13, as amended, regarding what parties may be admitted as 'respondent parties' in claims before the Special Chamber.

45. Based on this changed interpretation of the law, the Appellate Panel now found that only a socially owned enterprise or the KTA (or subsequently PAK) could be authorized to act as 'respondent parties' in cases before the Special Chamber. The Appellate Panel noted that the Applicant is a religious institution, while the Municipality of Deçan/Dečani and the KTA are public authorities, therefore none of them can act in the capacity of 'respondent party' in proceedings before the Special Chamber. In other words, only when the Applicant would be acting in the capacity of a 'claimant party', but not in the capacity of a 'respondent party', could the Special Chamber have jurisdiction over the case.

46. The Decisions Nos. AC-I-13-0008 and AC-I-13-0009 also include a joint dissenting opinion of two judges. The dissenting opinion sees the Decisions as erroneous, because

    a. the legal basis and the position on the interpretation of the relevant provisions of UNMIK Reg. 2002/13 at the original time of taking over the matter by the Special Chamber was such that it was possible that the parties acting in the capacity of 'claimant party' to the proceedings be the KTA and the Applicant; and
    b. in this case there are final and binding decisions of the Appellate Panel regarding who are the parties to the proceedings and these decisions have a character of *res judicata*.

Applicant's requests and the request for an interim measure

47. 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 of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters. The Applicant alleges that these decisions have 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 of Rights] of the Constitution, and Article 13 [Right to Legal Remedies] of the ECHR.

48. 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 same 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 on Ownership 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*.

49. In support of these arguments, the Applicant makes reference to case-law of the European Court of Human Rights, stating that: "*The right to legal certainty, as one of the fundamental guarantees which is provided by the principle of a fair trial, guarantees that the final court judgments cannot be subject to reconsideration in the regular proceedings (*Ryabykh v. Russia, *52854/99), namely that for the sake of providing legal certainty, it is adjudicated according to the laws and the case law, which were*

*applicable at the time of initiation of the dispute (*Masirevic v. Serbia*, 30671/08). Furthermore, the legal systems characterized by unlimited consideration of the final judgments, violate Article 6.1 of the European Convention for Protection of Human Rights and Fundamental Freedoms (*Sovrantsvo Holding v. Ukraine, 48553/99).”

50. Regarding the right to equality before the law, the Applicant argues that this was violated because parties who had been excluded from the proceedings by a Decision of the Appellate Panel in a decision that had become *res judicata*, were subsequently allowed to submit an appeal, while the Applicant was excluded from the proceedings on the basis that it was a “religious institution”.

51. Finally, the Applicant argues that it has complied with the obligation to exhaust all legal remedies before submitting a referral to the Court. The Applicant states that:

> *“By its decision, the Appellate Panel of the Special Chamber of the Supreme Court remanded the case to the Basic Court in Peja, branch in Decani. However, we consider that all legal remedies, which were available to the Applicant, have been exhausted. In fact, according to the legal stance off the European Court of Human Rights (McFarlane v. Ireland, 31333/06; El-Masri v. "the Former Yugoslav Republic of Macedonia ", 39630/09), it is explicitly requested that the legal remedies are “sufficiently certain”, not only in theory, but also in practice, as well as effective in the law and in the practice, in ordered to be considered “available legal remedies” within the meaning of the exhaustion of legal remedies.*
>
> *Taking into account that the entire proceedings lasted for fifteen years, that the case has already been before the then Municipal Court in Decani and that the proceedings before being taken over by the Special Chamber was conducted for eight years, as well as before the Municipal Court in Decani, the Applicant’s rights have already been violated, we consider that all legal effective remedies in this case have been exhausted, by expected second instance decision of the Appellate Panel of the Special Chamber. We consider that no effective remand of the proceedings can be discussed in the situation when the proceedings from the highest court instance-the Supreme Court, after fifteen years is remanded to the lowest instance-branch of the Basic Court. […]*
>
> *Based on the above, we consider that the requirements for exhaustion of available legal remedies under Article 113.7 of the Constitution, in this case have been fulfilled, and we propose to the Constitutional Court to admit the case for review.”*

52. The Applicant also requested 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.”*

Assessment of Admissibility of the Referral

53. In order to adjudicate the Applicant's complaint, the Court first needs to examine whether the complaint meets the admissibility requirements, laid down in the Constitution, and further specified in the Law and the Rules of Procedure.

54. 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."*

55. The Court notes that, pursuant to Article 21.4 of the Constitution, which provides that *"fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable"*, the Applicant is entitled to submit a constitutional complaint, invoking fundamental rights which are valid for individuals as well as for legal persons (See, *mutatis mutandis*, Resolution of 27 January 2010, Referral KI41/09, *AAB-RIINVEST University L.L.c., Pristina vs. Government of the Republic of Kosovo*).

56. The Court notes that the principle and fundamental complaint contained in this Referral is that the Applicant's right to a fair trial was violated by the Appellate Panel in its Decisions No. AC-I-13-0008 and No. AC-I-13-0009 when it admitted the appeal by PAK and the two SOEs against the Judgments of the Ownership Panel No. SCC-08-0226 and No. SCC-08-0227. The Applicant alleges that by admitting this appeal, the Appellate Panel did not treat the Judgments of the Ownership Panel as final and binding, in violation of the long established principle of *res judicata*.

57. The Court notes that, in its Decisions Nos. AC-I-13-0008 and AC-I-13-0009, dated 12 June 2015, the Appellate Panel had declared the Special Chamber not competent to adjudicate the property claims and had referred the dispute regarding the ownership of the properties back to the regular courts for renewed consideration *ab initio*. As such, these Decisions of the Appellate Panel suggest that the Applicant's dispute regarding the ownership of property has not yet been concluded with a final court decision.

58. However, as noted above, this Referral is primarily concerned with an allegation of fair trial. The question to be addressed is whether the Appellate Panel had jurisdiction to hear the appeals of the opposing parties PAK, "Iliria" and "APIKO", and to make its Decisions Nos. AC-I-13-0008 and AC-I-13-0009, given that this same Appellate Panel on 24 July 2010, by Decision No ASC-09-0025, had previously determined that these opposing parties PAK, "Iliria" and "APIKO" were not authorized parties to the case.

59. The Court notes that Applicant argues that it was rejected as a party to that appeal by the Appellate Panel, and therefore could not defend its claims. Furthermore, the Applicant argues that the Appellate Panel was not competent to hear the appeals of PAK, "Iliria" and "APIKO" because the Appellate Panel's decision of 24 July 2010 had become *res judicata*, and therefore no longer subject to any further judicial consideration. The Applicant argues that this was confirmed by the Ownership Panel in its Decisions Nos. SCC-08-0226 and No SCC-08-0227 dated 27 December 2012.

60. The Court recalls the case-law of the European Court of Human Rights (ECtHR) regarding the issue of exhaustion of legal remedies, where it has stated that only those

legal remedies need to be exhausted which relate to the alleged violation of rights. Specifically, the Court recalls the ECtHR Judgment of 28 July 1999, No. 25803/94, *Selmouni v France*, where the ECtHR stated, *inter alia*, that,

> *"75. [...] the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and* sufficient. *The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; [...]*
>
> *77. The Court would emphasise that the application of this rule must make due allowance for the context. [...] It* has *further recognised that the rule of exhaustion of [legal] remedies is neither absolute nor capable of being applied automatically; [...]"*

61. In this regard, the Court recalls its Judgment of 20 May 2014 in Case No. KI 10/14, *Joint Stock Company Raiffeisen Bank Kosovo S.C.,* where the Court found that the Applicant had exhausted all legal remedies for purposes of asserting a violation of its constitutional rights where the Supreme Court, without notification to the Applicant, or giving the Applicant an opportunity to be heard, unilaterally and *ex parte* remanded the Applicant's case to the Basic Court for re-trial.

62. In its Judgment, the Court held that the Applicant was not required to re-try the case in the Basic Court, which had no authority to rule on whether the Supreme Court had violated the Applicant's constitutional rights, before its alleged constitutional violation could be heard by this Court.

63. In the present Referral the Appellate Panel did not allow the Applicant, a party with specific interest in the case, to participate in the proceedings, but unilaterally ignored the fact that it's previous judgment of 24 July 2010, regarding authorized parties, was *res judicata*.

64. Similarly to case KI10/14, the Court reiterates that the Applicant is not required to re-try the case in the regular courts, which have no authority to rule on whether the Appellate Panel has violated the Applicant's constitutional rights, before the Applicant's alleged constitutional violation can be heard by this Court.

65. As quoted above in the European Court's Judgment in *Selmouni vs France*, only those legal remedies are required to be exhausted which satisfy all three of the following principles:

    a. The legal remedy relates to the violation alleged;
    b. The legal remedy is available to the Applicant (accessibility principle); and
    c. The legal remedy is sufficient to repair the violation (effectiveness principle).

66. As such, the Court finds that, in the circumstances of the present Referral, the re-starting of judicial proceedings on the property dispute do not satisfy the requirements of 'sufficiency' and 'effectiveness' to be considered legal remedies which the Applicant is required to exhaust before bringing the Referral to the Court, within the meaning of Article 113.7 of the Constitution, because these legal proceedings cannot address the Applicant's allegation of a violation of a fair trial by the Appellate Panel.

67. In addition, Article 48 of the Law prescribes:

> *"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".*

68. Having examined the Applicant's observations on the substance of its complaints, the Court considers that the Referral raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The Referral cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Rule 36 (1) (d) of the Rules, and no other ground for declaring it inadmissible has been established.

Assessment of the Merits of the Referral

69. The Court notes that the Applicant's principle allegation concerns a violation of the right to a fair trial, as protected by Article 31 of the Constitution and Article 6 of the ECHR.

70. The Applicant alleges that the Appellate Panel violated its right to a fair trial by:

    d. Re-opening a previous decision that had become *res judicata*;
    e. Intentionally not allowing the Applicant, an authorized party with a specific property interest in the proceedings, to participate in those proceedings; and
    f. Allowing parties previously declared "unauthorized" by the same court to then participate in those proceedings

71. Specifically, the Applicant alleges that in its Decisions Nos. AC-I-13-0008 and AC-I-13-0009, both dated 12 June 2015, the Appellate Panel reopened a case that had already become final, as a result of its earlier Decision of 24 July 2010 (No. ASC-09-0025). In that earlier decision the Appellate Panel had, in final instance, determined the authorized parties to the case. The Applicant argues that this final determination on the authorized parties had been confirmed by the Ownership Panel in its Decisions Nos. SCC-08-0226 and SCC-08-0227 dated 27 December 2012, wherein the Ownership Panel had declared the determination of authorized parties to be *res judicata*. Furthermore, the Applicant states that the Appellate Panel had refused the Applicant the right to be recognized as a party in the appeal, thereby denying to the Applicant the right to present its case.

72. The Court recalls Article 31, paragraph 2, of the Constitution, which states,

> *"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."*

73. The Court also recalls Article 6, paragraph 1, of the ECHR, which states, *inter alia*,

> *"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]"*

74. In this Referral the central question is whether the Appellate Panel was authorized to admit the appeal by PAK and the two SOEs. The Appellate Panel had previously

determined in final instance exactly who were authorized parties to the case, and yet the Appellate Panel admitted an appeal from those same parties that it had previously declared to be not-authorized. At the same time, the Appellate Panel refused to the Applicant the status of an authorized party, which it had previously confirmed in final instance.

75. As such, the Court considers that the issue to be addressed is whether the re-opening of a court decision that has become *res judicata* is compatible with the requirements of Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR.

76. In this regard the Court recalls its Judgment of 12 April 2012 in Case No. KI103/10, *Shaban Mustafa*, wherein it found a constitutional violation of a right to a fair trial where the Supreme Court of Kosovo acted with respect to the Applicant's contractual rights without first notifying and giving the Applicant an opportunity to be heard.

77. This same standard applies in the present Referral, where the Applicant was denied the right to be heard as a party before the Appellate Panel, and therefore did not have an opportunity to present its arguments on the issue of the jurisdiction of the Special Chamber. It is a fundamental part of the equality of parties to a case that the Applicant is afforded the opportunity to be heard at all stages of the judicial proceedings.

78. The Court also recalls its Judgment of 19 June 2012 in Case No. KI51/11, *Rexhep Rahimaj*, wherein it held that the District Court of Gjilan acted contrary to Article 31 of the Constitution by failing to execute a previous *res judicata* decision affecting the Applicant's rights to immovable property.

79. In that Judgment, the Court considered that the competent authorities have a positive obligation to establish a decision enforcement system, which is effective both in legal and practical terms, and which ensures their enforcement without undue delay. The execution of a judgment rendered by a court should be considered as a constituent part of the right to a fair trial, guaranteed under Article 31 of the Constitution and Article 6 ECHR. The Applicant should not have been denied a benefit from the decision, which had taken the final *res judicata* form in his favor (see, mutatis mutandis, ECtHR Judgment of 6 November 2002, *Sovtransavto Holding v. Ukraine*, No. 48553/99).

80. In addition, the Court recalls its Judgment of 17 December 2010 in Case No. KI 08/09, *Independent Union of Workers of IMK Steel Factory Ferizaj*. That Judgment concerned the non-execution of a final court decision that had become *res judicata*. On that question, the Court stated in paragraphs 61-63, *inter alia*, that,

> *"61. In this connection, the Court stresses that the right to institute proceedings before a court in civil matters, as secured by Article 31 of the Kosovo Constitution and Article 6, in conjunction with Article 13 of the European Convention of Human Rights (ECHR), would be illusory, if the Kosovo legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that these Articles prescribe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions. To construe the above Articles, as being concerned exclusively with access to a court and the conduct and efficiency of proceedings, would be likely to lead to situations incompatible with the principle of the rule of law which the Kosovo authorities are obliged to respect (see, mutatis*

mutandis, ECtHR Judgment in Romashov v. Ukraine, Application No. 67534/01, Judgment of 25 July 2004).

62. The rule of law is one of the fundamental principles of a democratic society and presupposes respect for the principle of legal certainty, particularly as regards judicial decisions that have become res judicata. *No party is entitled to seek for a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case (see, mutatis mutandis, Sovtransavto Holding v. Ukraine, no. 48553/99, § 72, ECHR 2002-VII). Were that not the case, the reversal of final decisions would result in a general climate of legal uncertainty, reducing public confidence in the judicial system and consequently in the rule of law. [...].”*

81. The Court also recalls the Judgment of the European Court of Human Rights (ECtHR) of 3 April 2008, *Ponomaryov v. Ukraine*, Application No. 3236/03, where the ECtHR stated in paragraph 40, *inter alia*, that,

“40. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which presupposes respect for the principle of res judicata *that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. [...] A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see, mutatis mutandis, Ryabykh v. Russia, no. 52854/99, § 52, ECHR 2003-X).”*

82. Furthermore, the Court recalls the Judgment of the ECtHR of 24 July 2003, *Ryabykh v. Russia*, Application No. 52854/99, where the ECtHR elaborated upon the principle of legal certainty in relation to the right to a fair trial in paragraphs 52-57,

“52. Legal certainty presupposes respect for the principle of res judicata (ibid. § 62), that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character.

53. In the applicant's case, however, the judgment of 8 June 1998 was overturned on 19 March 1999 by the Presidium of the Belgorod Regional Court on the ground that Judge Lebedinskaya of the Novooskolskiy District Court had misinterpreted relevant laws. The Presidium dismissed the applicant's claims and closed the matter, thus setting at naught an entire judicial process which had ended in a decision that was legally binding under Article 208 of the Code of Civil Procedure and in respect of which enforcement proceedings had commenced.

54. The Court notes that the supervisory review of the judgment of 8 June 1998 was set in motion by the President of the Belgorod Regional Court – who was not a party to the proceedings – in whom such power was vested by Articles 319 and 320 of the Code of Civil Procedure. As with the situation under Romanian law examined in Brumărescu, cited above, the exercise of this power by the President was not subject to any time-limit, so that judgments were liable to challenge indefinitely.

56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official.

57. By using the supervisory review procedure to set aside the judgment of 8 June 1998, the Presidium of the Belgorod Regional Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention."

83. The Court's own case, *Independent Union of Workers of IMK Steel Factory Ferizaj,* cited above concerns the execution of a final decision that had become *res judicata*. The case of *Ryabykh v. Russia* concerns the re-opening of a final court decision by a public official. Both cases, as well as the cited case of *Ponomaryov v. Ukraine*, clearly and explicitly state that the right to a fair trial under Article 6 of the ECHR and Article 31 of the Constitution includes the principle of legal certainty, which encompasses the principle that final judicial decisions which have become *res judicata* must be respected and cannot be re-opened or become subject to appeals.

84. In the present case the Court notes that the Appellate Panel in its Decision of 24 July 2010 had determined in final instance the authorized parties to the case. Accordingly, this decision had become *res judicata*.

85. In particular, the Court observes that the parties who were not admitted as authorized parties to the case by the Appellate Panel Decision of 12 July 2010, namely PAK, the two SOEs "APIKO" and "Iliria", and the Municipality of Deçan/Dečane, had the possibility at that time of submitting a Referral to this Court claiming a violation of their constitutional rights as a result of this decision. None of these parties addressed any complaints to the Constitutional Court. As a consequence of that failure, this decision of the Appellate Panel could no longer be challenged.

86. The first-instance Ownership Panel considered itself bound by that final decision of the Appellate Panel and explicitly stated in its Judgments of 27 December 2012 (No. SCC-08-0226 and No. SCC-08-0227) that the Decision of the Appellate Panel on the authorized parties was *res judicata* and that, therefore, "*It is not relevant whether the current composition of the Specialized Panel [on Ownership] agrees with that conclusion or not. The final Decisions are binding not only on parties but also on all Courts unless a new Law regulates the field differently after the adoption of such final Decision on a procedural matter."*

87. The Court notes that in the challenged Decisions of the Appellate Panel no mention is made of the Appellate Panel's previous decisions in the case. Moreover, the Appellate Panel initially admitted the appeal by the parties previously declared not-authorized,

refused to accept the Applicant as a party to these proceedings, and subsequently declared the Special Chamber not competent to adjudicate the dispute.

88. In these circumstances, the Court considers that the Applicant had a legitimate expectation that its case had been decided in final instance by the Ownership Panel and that it could not be re-opened before the Appellate Panel. As such, the Applicant should have seen the Judgments of the Ownership Panel executed.

89. As quoted above, the Court reiterates that, "*One of the fundamental aspects of the rule of law is the principle of legal certainty, which presupposes respect for the principle of* res judicata*, that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case.*"

90. Based on these considerations and its previous case law, as well as that of the ECtHR, the Court concludes that the Judgments of the Ownership Panel of 27 December 2012 (No. SCC-08-0226 and No. SCC-08-0227) had become *res judicata* on the basis of the earlier final and binding decision of the Appellate Panel of 24 July 2010 regarding the authorized parties.

91. By using the appeal procedure to overturn these Judgments of the Ownership Panel and to refer the original property dispute back to the regular courts, the Court finds that by its Decisions of 12 June 2015 (Nos. AC-I-13-0008 and AC-I-13-0009) the Appellate Panel infringed the principle of legal certainty and denied the Applicant a fair and impartial hearing on its rights and obligations within the meaning of Article 31, paragraph 2, of the Constitution and of Article 6, paragraph 1, of the ECHR.

92. The Court concludes that there has been a violation of the Applicant's right to a fair and impartial hearing as protected by Article 31, paragraph 2, of the Constitution in conjunction with Article 6, paragraph 1, of the ECHR.

93. The Court notes that this conclusion exclusively concerns the challenged Decisions of the Appellate Panel of 12 June 2015, and does not in any way, either favourably or unfavourably, reflect upon the legality of the many and varied proceedings which took place prior to the challenged Decisions, because that is outside the scope of jurisdiction of this Court.

94. Having found a violation of the Applicant's right to a fair and impartial trial under Article 31 of the Constitution, the Court does not consider it necessary to examine the Applicant's further allegations in relation to Articles 24 [Equality Before the Law], 32 [Right to Legal Remedies], 46 [Protection of Property], and 54 [Judicial Protection of Rights] of the Constitution, and Article 13 [Right to Legal Remedies] of the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 21.4 and 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (a) of the Rules of Procedure, in the session held on 19 May 2016, by majority

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 European Convention on Human Rights;

III. TO HOLD that it is not necessary to examine whether there has been a violation of Articles 24, 32, 46 and 54 of the Constitution, and of Article 13 of the European Convention on Human Rights;

IV. TO HOLD that the two Decisions of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 12 June 2015, Nos. AC-I-13-0008 and AC-I-13-0009, are null and void, and that the two Decisions of the Specialized Panel on Ownership of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 27 December 2012, No. SCC-08-0226 and No. SCC-08-0227, are final and binding, and as such are *res judicata*;

V. TO NOTIFY this Decision to the Parties;

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

VII. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Arta Rama-Hajrizi

KI124/15, Applicant Arif Kryeziu, Constitutional review of non inclusion in proceedings of privatization of the Socially Owned Enterprise "Liria"

Case no. KI124/15, Resolution on Inadmissibility rendered on 9 March 2016 and published on 23 May 2016.

Keywords: *individual referral, inadmissible referral, non-exhaustion of legal remedies, process of privatization*

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 from a share of proceeds from privatization of the Socially Owned Enterprise "Liria" from Prizren. However, the Applicant complains about his non-inclusion in the list of employees from the privatization of SOE "Liria".

The Applicant does not refer to any constitutional provision in particular; rather he states*: "I rely on you, because I have reasons. No one will give me the right, except you."* He did not submit any decision of any institution that has violated his rights. The Applicant has not submitted any evidence that he has appealed in accordance with the PAK notification or with the applicable law in Kosovo

The Court considers that the Applicant has waived his right to further complain and thus has not exhausted all legal remedies, as this rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights.

The Constitutional Court based on the foregoing, declared the Referral inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI124/15
Applicant
Arif Kryeziu
Constitutional Review of non inclusion in proceedings of Privatization of the Socially Owned Enterprise "Liria"
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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Arif Kryeziu from Prizren (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 from a share of proceeds from privatization of the Socially Owned Enterprise "Liria" from Prizren (hereinafter, SOE "Liria").

Subject matter

3. The Applicant complains about his non-inclusion in the list of employees that benefited from the 20% of the proceeds from the privatization of SOE "Liria".

4. The Applicant has previously filed to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) an identical Referral (KI19/15).

5. The Applicant does not invoke any constitutional violation.

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 Court

7. On 16 October 2015, the Applicant submitted the Referral KI124/15 to the Court.

8. On 5 November 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Ivan Čukalović and Arta Rama-Hajrizi.

9. On 9 December 2015, the Court notified the Applicant about the registration of the Referral and, in accordance with Rule 29 of the Rules of Procedure, requested him to complete his Referral. A copy of the Referral was sent to the Kosovo Privatization Agency (hereinafter, the KPA).

10. On 28 January 2016, the Court requested the Applicant to clarify whether he has filed any appeals. However, the Applicant did not answer the requested information.

11. On 9 March 2016, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 23 February 2015, the Applicant submitted to the Court Referral KI19/15, which was dismissed on 23 September 2015.

13. On 6 October 2015, the Applicant filed a request with the Kosovo Privatization Agency (hereinafter, the KPA) pertinent to his non-inclusion in the list of employees benefiting from a share of proceeds from the sale of SOE "Liria".

14. On 6 October 2015, the KPA informed the Applicant that all employees that were not included in the list to benefit from the sale of SOE "Liria" have a right to complain.

15. The relevant part of the above-stated KPA notification reads that *"(...) the last date for filing appeals against the initial list was 24.12.2011"* and "*the last day to file an appeal against the final list was 31.03.2012"*.

16. In that respect, the Applicant has not answered to the clarification requested on 28 January 2016 and has not presented any evidence that he has filed appeals with the KPA or the Special Chamber of the Supreme Court, pursuing his right to appeal in accordance with the guidance of KPA and with the applicable law in Kosovo.

Applicants' allegations

17. The Applicant does not refer to any constitutional provision in particular; rather he states: *"I rely on you, because I have reasons. No one will give me the right, except you"*.

18. The Applicant has listed Decision to Dismiss the Referral in case no. KI19/15 as the last decision in his case. However, he does not state any complaint with regard to that Decision on dismissal.

Assessment of admissibility

19. 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.

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

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

21. The Court makes also refers to Article 47 of the Law which provides:

> *"Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
>
> *The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".*

22. In addition, the Court also takes note of the Rule 36 (1) (b) of the Rules of Procedure which specify:

> *(1) The Court may consider a referral if:*
>
> *(a)...*
>
> *(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.*

23. The Court notes that the Referral KI19/15 was dismissed, because the Applicant did not specify *"a concrete act of public authority"* and did not provided *"supporting documents and material evidence"*, as required by Articles 22.4 and 48 of the Law, and Rule 29 (2) (h) of the Rules of Procedure.

24. The Court further notes that, in the current Referral KI124/15, the Applicant was asked whether he has pursued his right to appeal, as instructed by the KPA notification of 6 October 2015. The Applicant has not submitted any evidence that he has appealed in accordance with the KPA notification or with the applicable law in Kosovo.

25. Therefore, the Court considers that the Applicant has waived his right to further complain and thus has not exhausted all legal remedies afforded to him by the applicable law in Kosovo. (See, for example, Case. No. KI07/09, *Demë and Besnik Kurbogaj,* Resolution on Inadmissibility of 19 May 2010, paragraphs 28-29; see also *mutatis mutandis* Case No. KI39/11, *Tomë Krasniqi,* Resolution on Inadmissibility of 30 January 2013, paragraph 44).

26. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an

effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the constitutional provisions. (See Case no. KI116/14, *Fadil Selmanaj,* Resolution on Inadmissibility of 26 January 2015, paragraph 48).

27. Before the foregoing, the Referral must be declared inadmissible, due to non-exhaustion of all legal remedies as established by Article 113.7 of the Constitution and as further provided for by Article 47 of the Law and specified by 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 9 March 2016, 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

KI112/15, Applicants: Feride, Nezaqete, Smajl, Veton, Mirvete, Agim and Merita Bulliqi, constitutional review of Judgment Rev. No. 1/2015 of the Supreme Court of 10 April 2015

KI112/15, resolution on inadmissibility, of 13 April 2016, published on 23 May 2016
Keywords: *individual referral, passive legitimacy, right to fair and impartial trial, manifestly ill-founded.*

The Applicants initiated the dispute for compensation of damage against the Energy Corporation of Kosovo (hereinafter: KEK) and Autotransport. The dispute was completed by Judgment Rev. No. 1/2015, of the Supreme Court, which rejected the statement of claim due to lack of passive legitimacy of the respondents.

The Applicants allege that the challenged Judgment violated their rights *"because the Supreme Court applied erroneously the substantive law based on the erroneously determined factual situation."*

The Court considers that the Judgment of the Supreme Court is fair and justified. In fact, it thoroughly explains why the revision was rejected as ungrounded due to lack of passive legitimacy of the respondents and, consequently, the judgments of the lower instance courts were modified. The Applicants have not explained how and why that conclusion of the Supreme Court on lack of passive legitimacy violated their right to fair and impartial trial. The Referral is declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
In
Case No. KI112/15
Applicants
Feride Bulliqi and Others
Constitutional Review of the Judgment Rev. No. 1/2015 of the Supreme Court dated 10 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

The Applicants

1. The Referral was submitted by Feride, Nezaqete, Smajl, Veton, Mirvete, Agim and Merita Bulliqi with residence in Prishtina, Municipality of Prishtina-Kosova (hereinafter, the Applicants). The Applicants are represented by Mr. Selatin Ahmeti, a practicing lawyer in Prishtina.

Challenged decision

2. The Applicants challenge the Judgment Rev. No. 1/2015 of the Supreme Court of 10 April 2015, which was served on the Applicants on 4 June 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which allegedly violated Article 31 [Right to Fair and Impartial Trial] 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 the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 27 August 2015, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 14 September 2015, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 23 September 2015, the Court notified the Applicants of the registration of the Referral and requested the Applicant to submit the power of attorney for representation before the Court.

8. On 12 October 2015, the Applicants submitted to the Court the requested power of attorney.

9. On 15 October 2015, the Court sent a copy of the Referral to the Supreme Court.

10. On the same date, the Court requested from the Basic Court in Pristina to submit a copy of the letter of receipt, showing the date upon which the Applicants have been served with the challenged Judgment.

11. On 20 October 2015, the Court received the requested letter of receipt indicating that the Applicants were served with the Judgment of the Supreme Court on 4 June 2015.

12. On 13. April 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

The Facts of the case

13. Fehmi Bulliqi, predecessor of the Applicants, was an employee of the Elektroekonomia e Kosovës, namely Elektroekonomia e Serbisë, Open-pit Mine in Bellaqevc (hereinafter: Elektroekonomia).

14. On 22 November 1993, Fehmi Bulliqi died with others employees, as a consequence of a traffic accident on his way to work happened on 23 August 1993.

15. The late Fehmi Bulliqi left behind his wife, Applicant Feride, and his children, Applicants Nezaqete, Smajl, Veton, Mirvete, Agim and Merita Bulliqi.

16. On 25 August 1993, an Agreement was concluded between the Insurance Company “Kosova” in Prishtina and Elektroekonomia on compensation of the damages to families of the persons who died as a result from the accident.

17. On 17 July 1996, the Applicants filled a claim with the Municipal Court in Pristina since Elektroekonomia did not pay the agreed compensation. The case was registered under number C. no. 1066/96, but it was lost and not completed.

18. At that time, the Applicants had filed a claim against “Autotransport” which has been a Working Unit of the Elektroekonomia e Kosovës.

19. On 6 July 2005, the Applicants requested the renewal and continuation of the case. The new case was registered then under the number C. no. 1535/05.

20. The Applicants expanded the claim in this proceeding to include also the Energy Corporation of Kosovo (hereinafter, KEK) as Respondent, as legal inheritor of the former

Elektroekonomia. The Applicants considered that the two entities KEK and "Autotransport" had joint responsibility to compensate the damages.

21. On 9 February 2010, the Municipal Court (C. No. 1535/2005) concluded that the KEK was responsible to compensate the damage, since KEK was the inheritor and legal successor of the Elektroekonomia. The claim against "Autotransporti" was rejected due to the lack of passive legitimacy.

22. On an unspecified date, KEK filed an appeal with the Court of Appeals, alleging "*all appealing grounds, provided by provisions of Article 181, paragraph 1, items a), b) and c) of the LCP* [Law on Contested Procedure]".

23. On 04 September 2014, the Court of Appeals (Judgment Ac. no. 1984/2012) rejected as ungrounded the KEK's appeal and upheld the Judgment of the Municipal Court, concluding that "*the damage compensation (...) is fair and reasonable*".

24. KEK filed a revision with the Supreme Court, alleging *"essential violations of the contested procedure provisions and the erroneous application of the substantive law"*.

25. On 10 April 2015, the Supreme Court (Judgment, Rev. No. 1/2015) granted the revision of KEK and modified the Judgments of the Municipal Court and the Court of Appeals.

26. In its Judgment, the Supreme Court held what follows.

> *"In 1990, entity Electro Economy of Kosovo was violently integrated in Electro Economy of Serbia and since that moment it ceased to exist as legal person. (...) While the second Respondent* [Autotransport] *was registered as joint stock company on 10.03.2006, without any other specification"*.
>
> *"There are no evidence in the case files that the Respondents have also inherited the obligations of EES and "Autotransport" from the time period of the interim measures before the war, which means that this entity does not have legal continuity with the previous entity, which undertook the obligation to compensate the damage for the consequences of the accident which happened on 23.08.1993. The Respondents cannot be treated as responsible for the consequences caused at the time when they did not exist as legal entity in Kosovo"*.
>
> *"The Respondents (...) do not have passive legitimacy since the party has subject matter legitimacy only if it is participating in the legal material relationship, from which the dispute has arisen, therefore the Respondents are not obliged to compensate the damage as requested by the statement of claim of the Claimants, since the Respondents lack the passive legitimacy"*.
>
> *"There is no legal basis for the existence of any legal succession between the Respondent and the former entity, which was subject of the claim in 1996. The Respondent did not inherit the obligations of the former entity and as such they do not have passive legitimacy"*.

Applicants' allegation

27. The Applicants claim that the challenged Judgment violated their rights to fair and impartial trial, as guaranteed by Article 31 of the Constitution.

28. In this regard, the Applicants allege that the challenged Judgment violated their rights *"because the Supreme Court of Kosovo has applied the substantive law based on the erroneously ascertained factual situation"*.

29. The Applicants further reason that *"the Respondent – KEK and "Autotransporti" has inherited all their assets, and therefore it is their obligation to compensate the Claimants for the damage because they use the coal of the Electro Economy of Kosovo, basic assets, the building and the entire property, without taking into account when it was registered and it changed the name as a new entity"*.

30. The Applicants request the Court to confirm that the Judgment of the Supreme Court violated the Applicant's constitutional right to fair and impartial trial and declare as fair and impartial the Judgments of the Municipal Court of Prishtina and of the Court of Appeals.

Admissibility of the Referral

31. The Court first examines whether the Applicants have fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

32. In this respect, the Court refers to paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

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

33. 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"*.

34. In addition, the Court refers to Rule 36 [Admissibility Criteria] 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".

35. The Court recalls that the Applicants claim that the challenged Judgment of the Supreme Court has violated their right to fair and impartial trial, *"because the Supreme Court of Kosovo has applied the substantive law based on the erroneously ascertained factual situation".*

36. However, the Court considers that the Applicants merely state that there was a violation of their constitutional right to fair and impartial trial, without explaining how and why the facts they presented were a violation of that constitutional right they referred to. They have 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)

37. The Court reiterates that, in order to have a case related to a constitutional violation, the Applicants must substantiate and prove that the proceedings 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. (See case *Shub against Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

38. The Court notes that the Supreme Court concluded namely that *"there is no evidence in the case files that the Respondents have also inherited the obligations of EES and "Autotransport" (...). The Respondents cannot be treated as responsible for the consequences caused at the time when they did not exist as legal entity in Kosovo".*

39. The Court considers that the Judgment of the Supreme Court is fair and justified. In fact, it thoroughly explains why the revision was rejected as ungrounded due to lack of passive legitimacy of the respondents and consequently the judgments of the lower instance courts were modified. The Applicant has not explained how and why that conclusion of the Supreme Court on lack of passive legitimacy violated his right to fair and impartial trial

40. The Court finds that the Applicants have not substantiated and proved their claim on a constitutional basis; on the contrary, they confined the discussion to the application of the substantive law based on the erroneously ascertained factual situation, which are of legality nature and fall under the jurisdiction of the regular courts.

41. 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).

42. Therefore, the Court considers that the challenged Judgment of the Supreme Court contains all the necessary reasons on which it is based, in accordance with the requirements of Article 31 of the Constitution and Article 6 ECHR.

43. The Court, even though acknowledging the unfavorable result for the Applicants, further reiterates that it is neither authorized nor is its task under the Constitution to act as a

court of fourth instance, in respect of the decision taken by the Supreme Court on lack of passive legitimacy of the respondents. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

44. For the foregoing reasons, the Court concludes that the Applicants have not sufficiently substantiated and proved their allegation and, therefore, the Referral is inadmissible as manifestly ill-founded on a constitutional basis.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 13. April 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Arta Rama-Hajrizi

KI76/15, Applicant: Dušanka Mitić, constitutional review of Judgment AC-I-13-0114-A0001 of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 11 December 2014

KI 76/15, resolution on inadmissibility of 16 March 2016, published on 23 May 2016
Keywords: *individual referral, equality before the law, right to fair and impartial trial, protection of property, manifestly ill-founded.*

On 21 April 2008, the Applicant submitted a claim with the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, the Specialized Panel) for annulment of purchase contracts over two cadastral parcels located in Llapje Selle village.

On 11 July 2013, the Applicant submitted an appeal due to: "essential violations of the contested procedure provisions; erroneous and incomplete ascertainment of the factual situation; erroneous application of the substantive law."

On 11 December 2014, the Appellate Panel by Judgment AC-I-13-0114-A0001 rejected the appeal as unfounded and upheld the Judgment of the Specialized Panel.
The Applicant claimed that the Judgment of the Appellate Panel violated her rights to equality before the law, to fair and impartial trial and consequently to protection of property.

The Court found that all Applicant's arguments, which were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decision were set out at length, and that, accordingly, the proceedings before the regular courts, taken as a whole were fair. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
In
Case KI76/15
Applicant
Dušanka Mitić
Constitutional review of Judgment AC-I-13-0114-A0001 of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 11 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral is submitted by Mrs. Dušanka Mitić Simić from village of Lapje Selo, Municipality of Gračanica (hereinafter, the Applicant), represented by Mr. Visar Vehapi, a lawyer practicing in Prishtina.

Challenged decisions

2. The Applicant challenges Judgment AC-I-13-0114-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 11 December 2014, which was served on the Applicant on 12 February 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 53 [Interpretation of Human Right Provisions] of the Constitution.

Legal basis

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

Proceedings before the Constitutional Court

5. On 11 June 2015, the Applicant via Post Office filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) which arrived at the Court on 15 June 20015

6. On 3 August 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.

7. On 4 September 2015, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Appellate Panel.

8. On 16 March 2016, 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 21 April 2008, the Applicant submitted a Claim with the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, the Specialized Panel) for annulment of purchase contracts over two cadastral parcels located in Llapje Sellë/Laplje Selo Village.

10. The Applicant claimed that the contracts of sale of these parcels were concluded under the pressure of the state authorities of that time.

11. On 20 June 2013, the Specialized Panel (Judgment SCC-08-0105) rejected as ungrounded the Claim of the Applicant.

12. In the reasoning of this Judgment, it is said that *"the Claimant based its action on Article 103 of the Law of Contract and Torts of the year 1978 and Article 8A of the Law on Transfer of Immovable Property of 1981. However, Article 1106 of the Law of Contract and torts explicitly excludes the retroactive effect of legal provisions and therefore cannot apply for deeds of 1960, linked by the Claimant's predecessor. (...) When we are referring to Article 8 of the Law on Transfer of Immovable Property, the court is of the opinion that this Law has never been applied in Kosovo. The law was approved in 1981 in Serbia by the Assembly of Serbia (Official Gazette of Serbia 45/81) and in the same year in Kosovo by the Kosovo Assembly (Official Gazette (45/81). Both laws have the title "Law on Transfer of Immovable Property". On 23.07.1987 Serbia lawmakers amended the law regarding Article 8a. Serbian legislature also had no power to amend the laws of a next legislature. So Kosovo Law on Circulation of Real Estate, had never adopted the provision of Article 8 of the Law of Serbia".*

13. On 11 July 2013, the Applicant submitted an appeal due to: "*Essential violations of the contested procedure provisions; Erroneous and incomplete ascertainment of the factual situation; Erroneous application of substantive law – LAW".*

14. On 11 December 2014, the Appellate Panel refused the appeal as unfounded and upheld the Judgment of the Specialized Panel.

15. In the reasoning of this Judgment the Appellate Panel of the SCSC states:

> *"... the Appellate Panel concludes the same as the court of the first instance, that the Law on Contracts of Torts of 1978 and the Law on Transfer of the Immovable Property of 1981, respectively amended article (8a in 1987), on which the Appellant bases its allegations on the appeal, explicitly exclude their retroactive effect, and thus may not apply to contracts of 60s, entered by the predecessor of the Claimant. (...).*
> *Amendments of this article were made by Serbia unilaterally after 1987, despite the fact that it still had not legislative power to amend the laws of Kosovo, therefore that provision has never been valid in Kosovo, but after it was finally abolished the substantial autonomy of Kosovo".*

16. Moreover, the Appellate Panel found that *"the current applicable law for cases related to such requests is the Law of the Special Chamber of the Supreme Court of Kosovo no. 04/L-033, which in Article 11, paragraph 2, solves the dilemma of such requests."*..

Applicant's allegations

17. The Applicant claims that the Judgment of the Appellate Panel violated her rights to equality before the Law, to fair and impartial Trial and consequently to protection of Property.

18. The Applicant alleges that the Appellate Panel deprived the Applicant from the right to fair and impartial trial, because it "*rendered completely political judgments and not legal ones, because it is not in the competence of the Court to deal with the abrogation of any law (...) whereas the exercise of legal power and application of laws in force fall in the competency of the courts"*.

19. The Applicant further alleges that alleges that the Appellate Panel *"violated also Article 24 of the Constitution of the Republic of Kosovo (...), because it treated the Applicant - Ms. Dushanka Mitiq-Simiq in an unequal manner before the law, compared to those thousands of case laws before 1999 and thousands of others after 1999"*.

20. In addition, the Applicant concluded that *"by violating the provisions mentioned above, the SCSCK has also violated Article 46 of the Constitution of the Republic of Kosovo, which guarantees the protection of the property right"*.

21. Finally the Applicant requests the Court namely *"to declare invalid*" the challenged Judgment and *"to remand Judgment (...) for retrial"*.

Admissibility of the Referral

22. 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.

23. 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."

24. 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".

25. The Court further takes into account Rule 36 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".

26. The Court recalls that the main argument of the Applicant has to do with the applicability of Article 8 a) of the Law on Transfer of Immovable Property of the Republic of Serbia *"in the entire territory of the Republic of Serbia, which means that it was applicable in Kosovo, too".*

27. In fact, the Applicant argued that *"certain provisions (at that time) were regulated in a unique manner, pursuant to Article 300 of the Constitution of Serbia in the entire territory of the former Republic – which means that of former SAPK, too; and for that, such a provision was approved to be applied by former SAPK, too".*

28. The Court considers that the Appellate Panel thoroughly analyzed the allegations made by the Applicant, reasoning in a detailed manner why her appeal was refused as unfounded.

29. In fact, the Appellate Panel explained that *"the Law on Contracts of Torts of 1978 and the Law on Transfer of the Immovable Property of 1981, respectively amended article (8a in 1987), on which the Appellant bases its allegations on the appeal, explicitly exclude their retroactive effect, and thus may not apply to contracts of 60s, entered by the predecessor of the Claimant".*

30. Moreover, the Appellate Panel further concluded that *"in this actual case there wasn't any contradiction between the law of Kosovo and Serbia".*

31. The Court considers that the alleged erroneous application of certain legal provisions instead of others pertains to the domain of legality, which falls under the prerogatives of the regular courts. Moreover, that allegation configures a "fourth instance" appeal submission.

32. 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). (See, for example, Case No. KI72/14, Applicant *Besa Qirezi,* Judgment of 4 February 2015, para.65)

33. 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).

34. The Constitutional Court recalls that its role is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance" court (See case, *Akdivar v. Turk*ey, 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).

35. The Court reiterates that, as a general rule, the establishment of the facts of the case and the interpretation of law are a matter solely for the regular instances whose findings and conclusions in this regard are binding on the Constitutional Court. However, where a decision of a regular court is clearly arbitrary, the Court can and must call it into question. (See *Sisojeva and Others v. Latvia,* [GC], application no. 60654/00, Judgment of 15 January 2007, para. 89).

36. The Court considers that the proceedings before the Appellate Panel were not arbitrary; the proceedings were fair and the Judgment was entirely justified and reasoned, namely explaining why the legislation invoked by the Applicant was not applicable to her case. (See case *Shub v. Lithuania,* No. 17064/06, ECHR, Decision of 30 June 2009).

37. Moreover, the Court considers that the Applicant has not built her allegations on a constitutional basis. In fact, the Applicant has not substantiated and proved that the Appellate Panel denied her rights, while deciding that the retroactive effect is excluded.

38. On the contrary, the Court notes that the Applicant based her complaint on "*Erroneous application of substantive law – LAW",* which pertains to the domain of legality and as such does not fall under the jurisdiction of the Constitutional Court.

39. In addition, the fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution.

40. Consequently, the Referral is manifestly ill-founded on a constitutional basis and is inadmissible pursuant to Rule 36 (1) d) and (2) d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 (7) of the Constitution, Article 48 of the Law and Rules 36 (1) d) and (2) d) of the Rules of Procedure, in the session held on 16 March 2016, 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

KI43/16, Applicant Mehdi Kryeziu, Constitutional review of Judgment Pml. No. 181/15 of the Supreme Court of the Republic of Kosovo, of 6 November 2015

KI43/16, Resolution on Inadmissibility rendered on 14 April 2016 and published on 23 May 2016

Keywords: *individual referral, right to fair and impartial trial, equality before the law, principle of legality and proportionality, effective legal remedy, interim measure, manifestly ill-founded referral*

The Supreme Court upheld the decisions of the regular courts which found the Applicant guilty of committing the criminal offense, grave bodily injury.

The Applicant alleged among the other that the decisions of the regular courts have violated his rights to equality before the law, to fair and impartial trial, to legal remedies and the principles of legality and proportionality in criminal cases. The Applicant also requested the imposition of interim measure.

The Court concludes that the Applicant's right to an effective legal remedy was respected. He filed an appeal with the Court of Appeal and a request for protection of legality with the Supreme Court. The allegations submitted by him were reviewed and it was decided that no violations of law were committed. The fact that the Applicant does not agree with the conclusion of the Court of Appeal or of the Supreme Court does not render the remedy ineffective as such. The Court also rejected the request for interim measure.

RESOLUTION ON INADMISSIBILITY
In
Case No. KI43/16
Applicant
Mehdi Kryeziu
Constitutional review of Judgment Pml. No. 181/15 of the Supreme Court of the Republic of Kosovo, of 6 November 2015
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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was filed by Mr. Mehdi Kryeziu, from Suhareka (hereinafter, the Applicant). He is represented by Mr. Naim Qelaj, a lawyer from Prizren.

Challenged Decision

2. The Applicant challenges the Judgment Pml. No. 181/15 of the Supreme Court, of 6 November 2015, which upheld the Judgments PAKR. No. 606/14 of the Court of Appeal, of 25 February 2015, and P. No. 11/13 of the Basic Court in Prizren, of 11 September 2014, finding the Applicant guilty of a criminal offence.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 33, paragraph 1 [The Principles of Legality and Proportionality in Criminal Cases] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) in conjunction with Article 6 [Right to Fair Trial] and Article 13 [Right to an Effective Remedy] as guaranteed by the European Convention on Human Rights (hereinafter, the ECHR).

4. In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely "*to suspend the execution of the final Judgment of the Basic Court in Prizren P. No. 11/13 of 11.09.2014 [...]*".

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 29 and 54 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

Proceedings before the Court

6. On 25 February 2016, the Applicant submitted the Referral to the Court through postal services.

7. On 14 March 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.

8. On 31 March 2016, the Court informed the Applicant about the registration of the Referral and requested him to file a power of attorney in case he chooses to be represented by Mr. Naim Qelaj, as stipulated in his Referral.

9. On 13 April 2016, the Applicant filed the requested document with the Court. On the same date, the Court sent a copy of the Referral to the Supreme Court.

10. On 14 April 2016, the Court deliberated on the case and decided to declare the Referral inadmissible and to reject the request for interim measures.

Summary of facts

11. Following a quarrel between three families, the Public Prosecution Office in Prizren issued an indictment against the Applicant under the suspicion of having committed the criminal offence of *"grave bodily injury"*.

12. On 11 September 2014, the Basic Court in Prizren (Judgment P. No. 11/13) found the Applicant guilty of committing the indicted criminal offence and sentenced him with 2 (two) years of imprisonment.

13. The Applicant filed an appeal with the Court of Appeal due to *"essential violation of the procedural law, substantial violation of the material law, wrong ascertainment of the factual situation and the imposed sanction"*.

14. On 25 February 2015, the Court of Appeal (Judgment PAKR. No. 606/14) rejected as ungrounded the Applicant's appeal whilst confirming the Judgment of the Basic Court in Prizren. The Court of Appeal reasoned as follows:

> *"[...] The challenged judgment [...] is clear and concrete, contains the right and correct reasons on all the decisive facts of this criminal case. [...] the first instance court has correctly and completely ascertained the factual situation in regard to these defendants concerning the criminal case, from which it results that the actions of the defendants contain all of the objective and subjective elements of the criminal offences, for which they have been found guilty, therefore, the allegations [...] are ungrounded"*.

15. The Applicant filed with the Supreme Court a request for protection of legality alleging *"essential violations of the procedural and material law"*.

16. On 6 November 2015, the Supreme Court (Judgment Pml. No. 181/15) partly accepted the Applicant's request for protection of legality. It decided that there had been a substantial violation of the material law since the Applicant's time spent in detention on remand was not calculated when imposing the sanction. In this respect, the Supreme Court modified the Judgments of the lower courts by calculating the time spent in detention by the Applicant. On the other hand, the Supreme Court rejected all other allegations submitted by the Applicant.

17. In more detail, the Judgment of the Supreme Court ascertained that *"[...] Mehdi Kryeziu was assigned on detention on remand since 02 August 2012 [...]. Since the time spent on detention on remand has not been calculated in the imposed sentence, the allegation on violation of criminal law is grounded, which allegation was approved and other judgments modified, as in the enacting clause of this judgment"*.

18. On the other side, the Supreme Court noted that *"[...] in the enacting clause 1.4., of the judgment of the first instance, have been described the actions of convicted Mehdi Kryeziu"*.

19. The Supreme Court considered that *"the fact that it has not been specified which object was used by the convicted Mehdi Kryeziu, represents no ambiguity, because in the present case, a grievous bodily harm was caused regardless of the specific object that was used"*.

20. The Supreme Court also considered as *"ungrounded and not argued"* the alleged suspicions on the objectivity of the trial panel, as *"it does not belong neither to the basis of essential violations of provisions of criminal procedure nor to violations of law, and as such, was not approved". [...].*

21. At the end, the Supreme Court concluded that the assessment of the circumstance of suffering of injuries as a mitigating circumstance, *"does not represent neither a procedural violation nor a violation of criminal law. It is in the discretion of the court/s which of the circumstances are evaluated as mitigating or aggravating in each concrete case"*.

Applicant's allegations

22. The Applicant claims that the decisions of the regular courts have violated his rights to equality before the law, to fair and impartial trial, to legal remedies and the principles of legality and proportionality in criminal cases.

23. In fact, the Applicant considers that he faced a *"biased adjudication"* and as a result he alleges that his right to equality before the law was violated. The Applicant further considers that *"during the proceedings conducted before the first instance court, the accused* [the Applicant] *was denied the right to appear as an injured party"*.

24. The Applicant claims that the Judgment of the Basic Court in Prizren was *"contradictory, unclear and confusing"* and that *"the entire trial at all its stages"* has been conducted in violation of the abovementioned articles of the Constitution and the ECHR.

25. The Applicant also claims that the appeal trial panel was biased *"because the Court of Appeal requested the change of the trial panel for the retrial, when granting the appeal of the first three [other] accused as grounded",* whereas for him and some other defendants it did not. He considers that the Court of Appeal endorsed *"selective justice"* in his criminal case.

26. Furthermore, the Applicant claims that the Judgment of the Supreme Court is *"unclear and confusing"* as it was delivered to his detriment *"despite the fact that it considered the request for protection of legality as grounded"*.

27. As a result, the Applicant alleges that the Basic Court in Prizren, the Court of Appeal and the Supreme Court have violated his right to fair and impartial trial.

28. The Applicant also claims that the Court of Appeal did not review his appeal and the allegations set forth by him. He further claims that his allegations *"were not analysed at all, thus confirming that the accused [the Applicant] was denied to have his appeal dealt with as an effective legal remedy"*. As a result, the Applicant alleges that the Court of Appeal violated his right to an effective legal remedy.

29. The Applicant further claims that he was not provided with a fair trial in compliance with the *"principle of legality"*, because the regular courts violated his right as protected by the principle of legality and proportionality in criminal cases.

30. In the end, the Applicant requests the Court to impose an interim measure in order to suspend the execution of the Judgment of the Basic Court in Prizren.

Admissibility of the Referral

31. The Court first examines whether the Applicant has met the requirements of admissibility as established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.

32. 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.*"

33. The Court also refers to Article 48 [Accuracy of the Referral] 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 a public authority is subject to challenge".*

34. Furthermore, the Court refers to Rule 36 (1) d) and (2) d) of the Rules of Procedure which 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".*

35. The Court recalls that the Applicant challenges Judgment (Pml. No. 181/15, of 6 November 2015) of the Supreme Court, which upheld the Judgment (PAKR. No. 606/14, of 25 February 2015) of the Court of Appeal and the Judgment (P. No. 11/13, of 11 September 2014) of the Basic Court in Prizren. All these judgments determined that the Applicant was guilty of the criminal offence as indicted and that he should serve a 2 (two) year imprisonment sentence.

36. The Court recalls that the Applicant alleges that the regular courts have violated his right to equality before the law, to fair and impartial trial, to an effective legal remedy and the principle of legality and proportionality in criminal cases.

37. The Court notes that the Applicant claims a violation of his *"right to equality before the law"* and *"the principle of protection of legality and proportionality in criminal cases"*. However, the Applicant merely referred to Article 22 and 33 of the Constitution, claiming that the proceedings were *"biased"* and that he did not have a fair trial as *"required"* by the *"principle of legality"*. In fact, he did not provide any further reasoning or constitutional arguments as to how and why such rights and principles have been violated by the regular courts. In other words, the Applicant did not substantiate and prove his allegations on constitutional basis even though it is the burden of the Applicant to do so.

38. The Applicant also claimed a violation of his right to *"fair and impartial trial"*, alleging that the Judgment of the Basic Court in Prizren was *"contradictory, unclear and confusing"*. He further claimed that he was denied the right to *"appear as an injured party"* although he was also one of the individuals who suffered injuries in the quarrel between families. The Applicant lastly claimed that the trial panel of the Basic Court in Prizren was biased and that the Court of Appeal adopted *"selective justice"* by ordering the change of the trial panel for some defendants and not for him.

39. In this respect, the Court notes that the Basic Court in Prizren, the Court of Appeal and the Supreme Court have comprehensibly and extensively reasoned their decisions referring to the provisions of the law in force. Moreover, the regular courts have addressed the allegations of violation of procedural and material law that were submitted by the Applicant. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

40. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicants' allegation of violations of the material and procedural law allegedly committed by the Court of Appeal when it rejected his appeal. The Supreme Court, in relation to the Applicant's allegation that the Judgment of the Basic Court in Prizren was

allegedly contradictory, unclear and confusing, stated that: *"[...] the judgment of the first instance have described the actions of the convicted Mehdi Kryeziu. [...] The fact that it has not been specified which object was used by [him], represents no ambiguity"*.

41. Furthermore, the Court observes that, in relation to Applicant's allegations as to why he was not recognized the status of an injured party, the Supreme Court reasoned that *"[...] almost all the injured in this event have suffered bodily injuries, so that they are also injured. Therefore the fact that upon deciding for the sentence of the convicted* [the Applicant], *this circumstance has not been evaluated as a mitigating circumstance does not represent neither a procedural violation nor a violation of criminal law. It is in the discretion of the court/s which of the circumstances is evaluated as mitigating or aggravating in each concrete case"*.

42. The Court further observes that in relation to the alleged *"selective justice"* endorsed by the Court of Appeal in respect of the changes ordered for the trial panel for some defendants, the Supreme Court maintained that *"the judgment of the first instance has been annulled for the part of criminal offence of murder for* [three other defendants] *and it has been requested to give the case to another trial panel. In relation to that, the defence of the convicted* [the Applicant] *alleges that the court of second instance has had suspicions on the objectivity of the trial panel, whereas the case should have been annulled completely, in respect to other convicted persons as well. However, this allegation is ungrounded and not argued, it does not belong neither to the basis of essential violations of criminal procedure not to violations of law, and as such, was not approved"*.

43. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, the Court of Appeal or the Basic Court in Prizren, unless and in so far as such errors may have infringed the Applicant's rights and freedoms protected by the Constitution (constitutionality).

44. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant does not agree with the outcome of the proceedings in his case does not give rise to an arguable claim of a violation of his rights as protected by the Constitution and the ECHR.

45. The Court notes that the Applicant had ample opportunities to present his case before the Basic Court in Prizren, the Court of Appeal and the Supreme Court. The alleged violations of the material and procedural law have been extensively and comprehensively addressed by all regular courts. The Court of Appeal and the Supreme Court have responded to all allegations of the Applicant as to whether the Judgment of the Basic Court in Prizren was fair or not. Both courts, the Court of Appeal and the Supreme Court, maintained that the Judgment of the first instance court was clear, not contradictory, impartial and that all decisive facts have been established correctly.

46. In fact, the Court further observes that the Supreme Court accepted one of the Applicant's arguments of a substantial violation of the material law when it decided to correct the calculation of the time spent by the Applicant in detention. However, it concluded that the Court of Appeal and the Basic Court in Prishtina did not commit any other violations of law. In line with this, the Applicant's argument that the Judgment of the Supreme Court decided to his detriment despite the fact that it approved his request for protection of legality is also ungrounded. It is ungrounded because the Supreme Court only partly accepted the Applicant's request for protection of legality with regards to the calculation of the sentence by making it clear that all other allegations of the Applicant are *"ungrounded"*.

47. In this respect, it is important to note that the Constitutional Court can only consider 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 Applicants had a fair trial. (See *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

48. The Court notes that the reasoning of the Judgment of the Supreme Court, referring to the Applicant's allegations of various violations of the law, is clear and the Court finds that the proceedings before the regular courts have not been unfair or arbitrary. (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

49. The Court recalls that the Applicant further claims a violation of his *"right to an effective legal remedy"*, because his *"allegations were not analyzed at all"* by the Court of Appeal and thus he was *"denied the right to have his appeal dealt with as an effective legal remedy"*. In this respect, the Court recalls that having an effective legal remedy does not equal to that remedy being necessarily successful for the Applicant, which is what he is mainly complaining about. The Court of Appeal has in fact addressed the allegations raised by the Applicant and has decided that *"[...] the challenged judgment [...] is clear and concrete, contains the right and correct reasons on all the decisive facts of this criminal case"*.

50. In that connection, the Court reiterates that the European Court of Human Rights established the standards on what amounts to an effective legal remedy. These standards in principle do not require that each and every allegation brought by an Applicant should be dealt with. More importantly, such standards should not be translated to mean that an effective legal remedy is one which proves to be successful for the Applicant. To the contrary, that is not a condition required neither by the ECHR nor the Constitution. In accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Constitutional Court is bound to interpret human rights and fundamental freedoms consistent with the court decisions of the European Court of Human Rights.

51. The Court concludes that the Applicant's right to an effective legal remedy was respected. He filed an appeal with the Court of Appeal and a request for protection of legality with the Supreme Court. The allegations submitted by him were reviewed and it was decided that no violations of law were committed. The fact that the Applicant does not agree with the conclusion of the Court of Appeal or of the Supreme Court does not render the remedy ineffective as such.

52. For the foregoing reasons, the Court considers that the Applicant has not accurately explained how and why his rights and freedoms have been violated and that he has failed to substantiate his claims on constitutional basis.

53. Therefore, according to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) d) and (2) d) of the Rules of Procedure, the Referral is manifestly ill-founded on a constitutional basis and thus is inadmissible.

Request for Interim Measure

54. The Applicant requested the Court to impose interim measure, namely to suspend the execution of the Judgment (P. No. 11/13, of 11 September 2014) of the Basic Court in Prizren, until deciding on the matter.

55. The Applicant did not provide any arguments or reasons as to why the interim measure should be granted by the Court. He merely requested it in his Referral.

56. 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 (...), 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."*

57. As emphasized above, the Applicant has not shown a *prima facie* case on the admissibility of the referral. Therefore, the request for interim measure should be rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution; Article 47 of the Law; and Rule 36 (1) d) and (2) d), 55 (4) a) and (5), and 56 (3) and (5) of the Rules of Procedure, on 14 April 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measure;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI03/16, Applicant: Remzie Duga, Constitutional review of Judgment Rev. no. 226/2015 of the Supreme Court of Kosovo, of 14 September 2016

KI 03/16, resolution on inadmissibility, of 13 April 2016, published on 23 May 2016
Keywords*: individual referral, right to work, right to fair and impartial trial, right to equality before the law, manifestly ill-founded.*

On 20 July 2011, the Applicant filed a lawsuit against MIA with the Municipal Court in Prishtina, requesting her reinstatement to the previous job position as well as the payment of all monthly salaries from the moment she was dismissed from work.

On 14 September 2015, the Supreme Court (Judgment Rev. no. 226/2015) rejected the Applicant's the request for revision as ungrounded and finalized the legal labour contest upon a final decision.

The Applicant claims that the challenged Judgment of the Supreme Court violated her right to a fair and impartial trial.

The Court found that the Applicant had been given the opportunity to present during various stages of the procedure her reasons and evidence, which she considered relevant to her case. At the same time, she was given the opportunity to effectively contest the reasons and evidence submitted by the opposite party, as erroneously interpreted by the Municipal Court, the Court of Appeals, and the Supreme Court in the regular court proceedings. The referral was declared inadmissible as manifestly ill-founded

RESOLUTION ON INADMISSIBILITY
In
Case No. KI03/16
Applicant
Remzie Duga
Constitutional review of Judgment Rev. no. 226/2015 of the Supreme Court of Kosovo, of 14 September 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Ms. Remzie Duga, from Prishtina (hereinafter, the Applicant), who is represented by Mr. Naim Haliti, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 226/2015 of the Supreme Court of Kosovo, of 14 September 2015, which rejected as ungrounded the revision of the Applicant filed against the Judgment of the Court of Appeal Ac. no. 1176/2013, of 30 March 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 6 of the European Convention 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 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 5 January 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 12 February 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.

7. On 29 February 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of it to the Supreme Court of Kosovo.

8. On 13 April 2016, 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

9. On 8 January 2001, the Applicant established employment relationship for an indefinite period with the Ministry of Internal Affairs (hereinafter, MIA).

10. On 30 July 2007, the Applicant submitted a request to MIA to be allowed an unpaid leave.

11. The Applicant says that she did not wait for an answer of MIA regarding her request to be allowed unpaid leave, left Kosovo to go to Switzerland for medical treatment and did not appear to her working place.

12. On 14 December 2007, after the conducted investigations, the MIA (Decision ref. 10070/D) terminated the Applicant's employment relationship, because she "*violated the principle of P/3.20 III-A, IV, D, G related to the requests for leave, she violated the principle P.1. 30, Annex H, by unexcused absence from work for more than 15 days and she violated the principle P- 4.16, III, E, which is related to professional standards of Kosovo Police Service*".

13. In 2010, the Applicant returned to Kosovo and applied for re-employment with the MIA; her application was rejected under Article 65.3 of the Law on Police.

14. On 20 July 2011, the Applicant filed a lawsuit against MIA with the Municipal Court in Prishtina, requesting her reinstatement to the previous job position as well as the payment of all monthly salaries from the moment she was dismissed from work.

15. On 11 September 2012, the Municipal Court (Judgment C. no. 1676/11) rejected the statement of claim of the Applicant, reasoning that the decision of the Kosovo Police Service on termination of employment relationship *"is fair and legitimate"*.

16. The Applicant filed an appeal with the Court of Appeal of Kosovo, due to *"essential violations of the provisions of the contested procedure and erroneous application of the substantive law"*.

17. On 30 March 2015, the Court of Appeal (Judgment Ac. No. 1176/13) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Municipal Court.

18. The Applicant filed a request for revision with the Supreme Court of Kosovo due to *"essential violations of contested procedure provisions and erroneous application of the substantive law"*.

19. On 14 September 2015, the Supreme Court (Judgment Rev. no. 226/2015) rejected as ungrounded the request for revision, because *"the lower instance courts had correctly applied the provisions of contested procedure and the substantive law"*

Applicant's allegations

20. The Applicant claims that the challenged Judgment of the Supreme Court violated *"Article 31, the right to a fair trial in conjunction with Article 6 of the European Convention on Human Rights and the right to work"* and, in addition, *"by previous judgments* [of regular courts] *was violated also the right not to be discriminated against as a constitutional category"*.

21. The Applicant alleges that her constitutional rights were violated, *"because the courts have made contradictory assessment and by opposite determination of the factual situation and application of the substantive law"*.

22. The Applicant also alleges that the decision terminating her employment relationship *"was never served on her"* and "*there is no fact that the latter* [the Applicant] *signed the decision above"*.

23. The Applicant further alleges that *"the lower instance courts did not correctly determine the circumstances in rendering these decisions", "the facts related to statements of the persons given under oath in the service of notaries, which are not included"*.

24. The Applicant requests the Court *"to annul the previous judgments during the constitutional review and the case be remanded to the competent court for reconsideration and retrial"*.

Admissibility of the Referral

25. The Court examines whether the Applicant has fulfilled the admissibility requirements as established in the Constitution and as further provided in the Law and as specified in the Rules of Procedure.

26. In that respect the Court refers to paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

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

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. In addition, the Court takes into account Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, which specifies:

"(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".

29. The Court recalls that the Applicant claims that the challenged Judgment of the Supreme Court violated her rights to a fair and impartial trial (i), to work and not to be discriminated against (ii).

(i). Right to a fair and impartial trial

30. In that respect, the Court refers to Article 31 of the Constitution, which establishes:

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

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

31. Furthermore, the Court takes into account Article 6 (1) of the ECHR:

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

32. In fact, the Court notes that the Applicant filed the revision with the Supreme Court, due to *"essential violations of the contested procedure and the erroneous application of the substantive law*".

33. The Court recalls that the Applicant allege that her right to a fair and impartial trial was violated, *"because the courts have made contradictory assessment and by opposite determination of the factual situation and application of the substantive law".*

34. In that respect, the Court notes that the Supreme Court considered that *"the second instance court (...) gave sufficient reasons for all the allegations raised in the appeal and (...), the lower instance courts had correctly applied the provisions of contested procedure and the substantive law when it assessed the claimant's statement of claim is unfounded".*

35. The Court further notes that the Supreme Court found that the Applicant *"left her working place and did not wait for an answer to the request for unpaid leave"* and thus *"the employment contract is terminated to an employee without his consent if he did not come to work for no reason for 5 consecutive days",* in accordance with the provision of Article 75, paragraph 3 of the Law on Basic Employment Rights.

36. The conclusion of the Supreme Court is in conformity with the jurisprudence of the ECtHR which upheld that the disputes on termination of service of public servants related with *"the specific activities of the public service in so far as the Applicant is acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities"* are excluded from the scope of Article 6 (1) of the Convention. *"A manifest example of such activities is provided by (...) the police".* (See cases: *Pellegrin v. France*, paragraph 66 ECtHR Judgment of 08, December 1999; *Massa v. Italy*, paragraph 26, ECtHR Judgment of 23 June 1993; *Glasenapp and Kosiek v. Germany,* paragraph 49. ECtHR Judgment of 28 August 1986).

37. The Court considers that the Supreme Court thoroughly analyzed, explained and justified the Applicant's allegations on violations of contested procedure and erroneous application of the substantive law.

38. Indeed, the Court emphasizes that the task of the Court is to assess whether the regular courts' relevant proceedings were fair in their entirety, including the way the evidence was taken, or in any way unfair or tainted by arbitrariness. (See mutatis mutandis*, Shub v. Lithuania*, paragraph 16 ECtHR Decision on Admissibility of Application of 30 June 2009; *Edwards v. United Kingdom*, paragraph 34. ECtHR Judgment of 66 December 1992; *Barbera and Messeque Jabardo against Spain,* paragraph 68. ECtHR Judgment of 6 December 1988,).

39. The Court reiterates that it is not its task to deal with errors of factual findings or applicable 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). An applicant must submit a reasoned allegation and a compelling argument when claiming that a public authority has infringed her/his rights and freedoms protected by the Constitution.

40. Moreover, the Court also reiterates that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, it cannot act as a "fourth instance court". (See case *Akdivar v. Turkey,* paragraph 65 ECtHR, Judgment of 16 September 1996See also *mutatis mutandis* the case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

41. In fact, the Court also considers that the Applicant has not sufficiently substantiated her allegations and has not explained how and why the Judgment of the Supreme Court on establishing the factual situation and applying the substantive law constitute a violation of her right to fair and impartial trial. Furthermore, she has not succeeded to show that the proceedings before the regular courts, including the Supreme Court, were unfair or tainted by arbitrariness or that his rights and freedoms have been infringed.

42. The Court recalls that the Applicant also alleged that *"the facts related to statements of the persons given under oath in the service of notaries"* were not included in the assessment of the factual situation. However, the Court notes that these statements are dated of November and December 2015 and the challenged Judgment of the Supreme Court is dated of 14 September 2015. Thus the statements could never be considered by the Supreme Court as they were issued after the completion of the proceedings and cannot be taken by the Court either.

43. The Court further recalls that the Applicant, in order to be reinstated to the previous job position and get back the claimed salaries, filed a lawsuit with the Municipal Court, filed an appeal with the Court of Appeal and filed a request for revision with the Supreme Court. Her request was rejected as ungrounded in all these instances.

44. The Court considers that the Applicant had the opportunity to present her claim and allegations before the regular courts. The facts and applicable law was extensively and comprehensibly assessed by all the decisions. Moreover, the Applicant in general had access to the first instance, appeal and revision, where she could present arguments and evidence in relation to her claims.

45. The Court further considers that the Applicant disagrees with the conclusion of the Supreme Court on establishing the facts and applying the substantive law. However, the mere disagreement of the Applicant with the outcome of the proceedings conducted by the regular courts cannot of itself raise an arguable claim for breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 of the ECHR. (See *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, paragraph 21, ECtHR Judgment of 26 July 2005).

(ii). Right to work and not to be discriminated against

46. The Court further recalls that the Applicant claims before the Constitutional Court that the decisions of the regular courts have violated her right to work and that she was discriminated against.

47. In that respect, the Court refers to Article 24 [Equality Before the Law], which establishes:

> *"1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
>
> *2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status".*

48. The Court also refers to Article 49 [Right to Work and Exercise Profession], which establishes:

> *"1. The right to work is guaranteed.*
> *2. Every person is free to choose his/her profession and occupation".*

49. The Court considers that the Applicant does not substantiate her claims on a violation of her right to work and not to be discriminated against; she only states that her right to

work and not to be discriminated against were violated as a result of the violation of the right to fair trial, without even referring to any constitutional provision,

50. Moreover, the Court notes that the Applicant has not raised these claims before the Supreme Court; she is presenting them for the first time before the Constitutional Court.

51. The Court reiterates that the Applicant should have raised these allegations before the regular courts for them to be able to consider them. Furthermore, the Court notes that the allegation on a violation of the right to work and not to be discriminated against would be a consequence of the alleged violation of her right for fair and impartial trial.

52. The Court has just found that the Applicant's allegation on a violation of the right to fair and impartial trial is inadmissible as manifestly ill-founded on a constitutional basis.

53. Therefore, the Court considers that it is unnecessary to separately examine in detail the alleged violation of the Applicant's right to work and not to be discriminated against under Articles 24 and 49 of the Constitution.

54. In all, the Court finds that the Referral is manifestly ill-founded on constitutional basis and is inadmissible, in accordance with the Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 16 April 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI118/15, Applicant Dragiša Stojković, Constitutional Review of Judgment GSK-KPA-A-129/13, of Appellate Panel of Kosovo Property Agency of the Supreme Court of Kosovo, of 3 June 2015.

KI118/15, Resolution on inadmissibility, of 12 April 2016, published on 27 May 2016.

Key words: individual referral, right to fair and impartial trial, languages, non-exhaustion of legal remedies

Appellate Panel of Kosovo Property Agency of Supreme Court of Kosovo issued a Judgment by which the appeal of the Applicant filed against the Decision of the Commission for Property Claims of Kosovo, was rejected as ungrounded.

The Applicant alleges that the Appellate Panel of Kosovo Property Agency of the Supreme Court of Kosovo violated his right which is guaranteed by Constitution, respectively Article 5 [Languages], and Article 6 [Right to a fair trial] of the European Convention on Human Rights.

Among others, the Applicant alleged that the Appellate Panel of the Kosovo Property Agency-Supreme Court of Kosovo, by its Judgment proved the fact that the Applicant showed that the requested property is not lost due to circumstances related to the conflict of 1998/1999. Further on, the Applicant alleged that the proved fact is absolutely not true and it can be only a result of mistranslation with or without intention.

The Court ascertained that the Referral shall be declared as inadmissible because the legal remedies set by Article 113.7 of the Constitution and specified in Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, have not been exhausted.

RESOLUTION ON INADMISSIBILITY
In
Case No. KI118/15
Applicant
Dragiša Stojković
Constitutional review of
Judgment GSK-KPA-A-129/13 of the Supreme Court of Kosovo
Kosovo Property Agency Appeals Panel,
of 3 June 2015
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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral is submitted by Mr. Dragiša Stojković, with residence in the town of Smederevo, in Serbia (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Judgment GSK-KPA-A-129/13 of the Supreme Court of Kosovo - Kosovo Property Agency Appeals Panel (hereinafter, the Appeals Panel), of 3 June 2015, which rejected as ungrounded the Applicant's appeal filed against the Decision KPCC/D/A/180/2012 of the Kosovo Property Claims Commission within the Kosovo Property Agency (hereinafter, the KPCC), of 14 December 2012.

3. The challenged Judgment was served on the Applicant on 30 June 2015.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by Article 5 [Languages] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and 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 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 September 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 14 October 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.

8. On 2 November 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Appeals Panel.

9. On 12 April 2016, the Review Panel, after having considered the report of the Judge Rapporteur, recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 11 January 2007, the Applicant requested to Kosovo Property Agency (hereinafter, KPA) the confirmation of the property right of his mother and repossession of a land parcel in the village Petrova, municipality of Prizren.

11. On 14 December 2012, the KPCC (Group Decision KPCC/D/A/180/2012) rejected the Applicant's claim. The KPCC further concluded that the Applicant failed to show that the claim involves circumstances directly related to or result from the armed conflict of 1998-1999.

12. On 15 May 2013, the Applicant filed an appeal with the Appeals Panel, alleging *"erroneous determination of the factual situation"* and *"erroneous application of the substantive law"*.

13. On 3 June 2015, the Appeals Panel (Judgment GSK-KPA-A-129/13) rejected the Applicant's appeal as ungrounded, reasoning as follows:

> "*KPCC has jurisdiction to resolve the property claims related to the conflict regarding the private immovable property [...] involving the circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.*
> *[...]*
> *Therefore, the KPCC decided in a lawful manner to reject the claim"*.

Applicant's allegations

14. The Applicant claims that the challenged Judgment violated Article 5 [Languages] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.

15. The Applicant alleges that the Appeals Panel established the fact that *"he has testified that the claimed property is not lost due to the circumstances interrelated with the conflict which occurred in 1998/1999"*. He concludes that the established fact *"is completely untrue and can only be a result of an erroneous translation, intentional or unintentional"*.

16. The Applicant argues that none of the Judges and the court recorder *"have Serbian language as their native language"* and thus the established fact by the Appeals Panel is due to *"a completely erroneous translation"* of his testimony, which has "*a completely opposite meaning*". The Applicant claims that he has *"the right to use (...) Serbian language during the procedure"*.

17. Finally, the Applicant also claims that his *"right to a fair trial, guaranteed by Article 6 of the European Convention on Human Rights and Fundamental Freedoms, has been violated"*.

18. The Applicant concludes by requesting the Court *"to confirm the unconstitutionality of Judgment GSK-KPA-A-129/13, of 03 June 2015, and instruct the avoidance of such violations"*.

Admissibility of Referral

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution and as further provided for in the Law and foreseen by the Rules of Procedure.

20. In this respect, the Court refers to Article 113 of the Constitution, which establishes:

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

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

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

22. In addition, the Court also takes note of the Rule 36 (1) (b) of the Rules of Procedure which foresee:

> *(2) "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. The Court recalls that the Applicant alleges that the challenged Judgment violated his right to use of language and to fair trial, because of an erroneous determination of facts, due to incorrect translation of his statement.

24. The Court notes that the Applicant alleges in his appeal before the Appeals Panel that *"the statement in the reasoning* [of the KPCC] *that I have not declared in my claim that the circumstances are directly linked to or are a consequence of the conflict in 1998-1999 is incorrect. I lost the possession over the property due to the circumstances as a result of the conflict in 1998-1999"*.

25. The Court further notes that the Applicant argued in his appeal that the *"erroneous and incomplete determination of the factual situation is reflected in what the Kosovo Property Agency failed to ascertain that I am the legal heir of the holder of property right"* and *"this resulted also with the erroneous application of substantive law, respectively the implementation of provision that defines the competence of the Kosovo Property Agency"*.

26. The Court considers that the Appeals Panel thoroughly analyzed the evidence presented and the allegations made by the Applicant, explaining and reasoning in detail why his appeal was rejected.

27. In fact, the Appeals Panel noted that KPCC explained that *"the claimed property was purchased in 1970 by the Covanay family and used it during the armed conflict"*. The Appeals Panel also mentioned that *"in reaction to the Court order, the Appellant did not substantiate that it is untrue that Covanay family in fact possessed the claimed property from before and during the armed conflict"*. In addition, the Appeals Panel noted that *"since 1986 a case was pending at the Court in Prizren between the parties on the claimed property"*.

28. Therefore, the Appeals Panel concluded with KPCC that *"the claim is not related to circumstances directly or resulting from the armed conflict and KPCC lawfully decided that KPCC does not have jurisdiction on the claim. So KPCC lawfully decided to dismiss the claim"*.

29. The Court notes that the Applicant's allegations before the Appeals Panel are related with ascertaining that he has the right to repossess the disputed property and as such are of a nature of legality and falls under jurisdiction of the regular courts.

30. Moreover, the Court also notes that the Applicant for the first time alleges before the Constitutional Court a constitutional violation of his rights to use of language and to fair trial, because of an incorrect translation of his statement. As a consequence of that incorrect translation, it occurred an erroneous determination of the facts and application of the law.

31. The Court further notes that the Applicant, in the regular proceedings, has neither raised concretely and substantially the alleged violation of his *"right to use (...) Serbian language during the procedure";* nor has he explained why he did not invoke in the regular courts his right guaranteed by Article 5 of the Constitution in the terms he has presented before the Court.

32. In fact, the Court emphasizes that the Applicant should have presented that allegation at least in his appeal before the Appeals Panel, as he was not only entitled but also obliged to do so in accordance with the principle of subsidiarity.

33. In that respect, the Court reiterates that, in accordance with the principle of subsidiarity, the regular courts should be given the possibility of finally deciding on the matter under their consideration. This means that an alleged constitutional violation in general should not be allowed to reach the Constitutional Court, without being previously reviewed by the regular courts.

34. The principle of exhaustion of legal remedies, related with the subsidiarity principle, requires that the Applicant has exhausted all legal remedies in the regular courts proceedings before coming to the Constitutional Court.

35. Therefore, the Court considers that the Applicant has waived his right to further complain and thus has not exhausted all legal remedies afforded to him by the applicable law in Kosovo. (See, for example, Case. No. KI07/09, *Demë and Besnik Kurbogaj,* Resolution on Inadmissibility of 19 May 2010, paragraphs 28-29).

36. That consideration is in conformity with the jurisprudence of the ECtHR, which upheld that *"the applicant complained that she was not able to have the proceedings conducted in Hungarian – her mother tongue - as she was not fluent in Serbian. The Court notes that (...) the applicant has never raised this complaint domestically. Thus this complaint needs to be rejected for non exhaustion of domestic remedies (...)".* (ECtHR, Decision as to the admissibility of application 44694 by *Erzebet PAP against Serbia*, of 21 June 2011, chapter the Law, para. 3).

37. The Court observes that other decisions of the ECtHR on the same subject were delivered, among others, in the following cases: *Cardot v. France*, Application no. 11069/84, Judgment of 19 March 1991, para. 34; Decision in the Application no. 40521/06, *Aleksandr Mikhaylovich Gorbatenko against Russia*, para 43 and 44; Decision as to the admissibility of Application nos 33088/96, 52236/99, 52451/99 - 52453/99, 52455/99, 52457/99 - 52459/99 by *Anton Jazvinsky against the Slovak Republic*, of 7 September 2000, chapter the Law, para. 3, 5, 7 b), 9, 11, 14, 15, 19 and 20 a); Decision in the Application no. 36367/09, *Ziyavdi Deniyevich Kagirov against Russia*, of 27 August 2013, para. 45; decision in the Application no. 56783/11, *Miroslav Kral against Slovakia*, of 2 December 2014, para 60 to 65; Decision in the Application no. 59703/13, *Lee Anthony Roberts against the United Kingdom*, of 5 January 2016, para 42 to 45.

38. The rationale for the exhaustion principle 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 constitutional provisions. (See Case no. KI116/14, *Fadil Selmanaj,* Resolution on Inadmissibility of 26 January 2015, paragraph 48).

39. Before the foregoing, the Referral must be declared inadmissible, due to non-exhaustion of legal remedies, as established by Article 113 (7) of the Constitution and as further provided for by Article 47 of the Law and specified by 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) and 56 b) of the Rules of Procedure, on 12 April 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Arta Rama-Hajrizi

KI67/15 and KI68/15, Applicants Mykereme Hoxha and Mërgim Hoxha Constitutional Review of Judgment Rev. no. 116/2012, of the Supreme Court of Kosovo, of7 November 2014

KI67/15 and KI68/15, Resolution on inadmissibility of 8 March 2016, published on 27 May 2015.

Key words*: individual referral, joint referral, right to fair and impartial trial, freedom of expression, right of access to public documents, protection of property, out of time referral.*

The Supreme Court of Kosovo issued Judgment Rev. No. 116/2012, of 7 November 2014, by rejecting the request for revision against Judgment Ac. No. 313/2010, of District Court, of 9 November 2011, by reasoning that the Judgment of the District Court is fair and the factual situation was confirmed completely.

Among others, the applicants allege that the Supreme Court of Kosovo violated the right to fair and impartial trial, freedom of expression, the right of Access to public documents and the right to property. Further on, the Applicants allege that they were not allowed to access the case files and the decisions of regular courts were never served on them.

The Court ascertained that the Referral shall be dismissed as inadmissible because it is out of time.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI67/15 and KI68/15
Applicants
Mykereme Hoxha and Mërgim Hoxha
Constitutional review of Judgment Rev. no. 116/2012, of the Supreme Court of Kosovo, of 7 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Ms. Mykereme Hoxha and Mr. Mërgim Hoxha, having their residence in Peja (hereinafter: the Applicants).

Challenged decision

2. The challenged decision is Judgment Rev. no. 116/2012 of the Supreme Court, of 7 November 2014, in conjunction with Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, and Judgment C. 90/03, of 9 January 2008.

3. According to the case file, the challenged Judgment was served on the representative of the Applicants on 27 January 2015.

Subject matter

4. The Applicants have submitted individual Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: Court), alleging that the aforementioned judgments violate their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 40 [Freedom of Expression], Article 41 [Right of Access to Public Documents], Article 46 [Protection of Property], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6, paragraph 1 [Right to a fair trial] in conjunction with Article 10 paragraph 1 [Freedom of expression] of the European Convention on Human Rights and Freedoms (hereinafter: the ECHR), and Article 1 of Protocol 1 to the ECHR.

5. The Applicants request that the Court hold a hearing session regarding their case.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 27 and 29 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 28 May 2015, the Applicants filed separately their Referrals with the Court.

8. On 29 June 2015, the President of the Court, by Decision GJR. KI67/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, by Decision KSH. KI67/15, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova, and Arta Rama-Hajrizi.

9. On 15 July 2015, the Court requested the Basic Court in Peja to provide some additional information, indicating the date when the Applicants were served with the challenged Judgment.

10. On 20 August 2015, the Basic Court in Peja submitted the requested documents to the Court.

11. On 2 September 2015, in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered that Referral KI68/15 be joined to Referral KI67/15 and that the Judge Rapporteur and the Review Panel be the same for both Cases (KI67/15 and KI68/15), as it was decided in Referral KI67/15.

12. On 10 September 2015, the Court notified the Applicants on registration of the Referrals KI67/15 and KI68/15 and their joinder.

13. On 29 October 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a document whereby she requests that the Order on Joinder of the Referrals (KI67/15 and KI68/15) be served on her.

14. On 4 November 2015, the Applicant, Ms. Mykereme Hoxha, sent to the Court a document based on which she requests the review of the decision of the Court on the joinder of the Referrals (KI67/15 and KI68/15).

15. On 11 November 2015, the Applicant, Mr. Mërgim Hoxha, submitted to the Court a document based on which he requested the review of the Decision of the Court on the Joinder of the Referrals (KI67/15 and KI68/15).

16. On 17 November 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a document whereby she requested "*the elimination of constitutional obstacles*" and the delivery of all the decisions on the appointment of the Judge Rapporteur and the Review Panel in Cases KI27/12, KI31/12, KI32/12 and KI33/12, as well as the order on the joinder of these Referrals.

17. On 18 November 2015, the Applicant, Mr. Mërgim Hoxha, sent to the Court a document whereby he requested "*the elimination of constitutional obstacles*" and the delivery of all the decisions on the appointment of the Judge Rapporteur and the Review Panel in Cases

KI27/12, KI31/12, KI32/12 and KI33/12, as well as the order on the joinder of these Referrals.

18. On 25 November 2015, the Applicant, Mrs. Mykereme Hoxha, submitted to the Court a letter whereby she requests that the President, Arta Rama-Hajrizi and the Vice President, Ivan Čukalović, be recused from the review of her case.

19. On 16 December 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court an additional document (Supplementation to the Referral).

20. On 22 December 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a request whereby she requested that the Court hold a hearing session for the case.

21. On 29 December 2015, upon their requests, the Court sent to the Applicants the Order on the joinder of the Referrals (KI67/15 and KI68/15).

22. On 6 January 2016, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a request whereby she requested "*to deliver to her 5 (five) annexes to the Order on the joinder of the Referrals (KI67/15 and KI68/15)*".

23. On 12 January 2016, the Applicant, Ms. Mykereme Hoxha, submitted to the Court another request for "*the review of the decision on the joinder of the Referrals (KI67/15 dhe KI68/15)*".

24. On 15 January 2016, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a request whereby she requested that the case no. KI67/15 be reviewed separately from case KI68/15.

25. On 27 January 2016, the Applicant, Mrs. Mykereme Hoxha, submitted to the Court a letter whereby she re-requested that the President, Arta Rama-Hajrizi and Deputy President, Ivan Čukalović be recused from the review of her case.

26. On 9 February 2016, the Applicant Ms. Mykereme Hoxha submitted to the Court an additional document (Supplementation of the Referral).

27. On 7 March 2016, the Applicant Ms. Mykereme Hoxha submitted to the Court a request whereby requesting that the Court holds a hearing session regarding the case.

28. On 7 March 2016, the Court in accordance with Article 7 of the Rules of Procedure reviewed the Applicant's request regarding the recusal of the President Arta Rama-Hajrizi and Deputy President, Ivan Čukalović from the review of the case and unanimously decided to not take into consideration as it did not meet the requirements provided by Article 18 of the Law.

29. On 8 March 2016, 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

30. As regards the raised allegations and the facts presented by the Applicants, related to Judgment C. 90/03 of the Municipal Court, of 9 January 2008 and Judgment AC. no.

313/2010 of the District Court, of 9 November 2011, which are completely similar to the present Referral, the Court has already rendered a decision on the following cases: KI27/12, KI31/12, KI32/12 and KI33/12.

Summary of facts for previous cases

31. The Applicants' Referrals were about a property contest, related to a property located in Peja. H. D. (who is the sister of the first Applicant and aunt of the second Applicant) had filed a Claim with the Municipal Court in Peja on the confirmation of the ownership rights over the apartment, against the respondent M. H. (who is the deceased spouse of the first Applicant and the deceased father of the other Applicant). In 2002, M. H. passed away.

32. On 9 January 2008, the Municipal Court in Peja rendered Judgment C. no. 90/03, confirming that H. D. was the owner of the apartment and obliging the Applicants to recognize the H. D.'s ownership right.

33. On 9 November 2011, the District Court in Peja rendered Judgment AC. no. 313/2010, rejecting the Appeal as ungrounded.

34. On 19 March 2012, Ms. Mykereme Hoxha filed a Referral with the Court bearing number KI27/12.

35. On 26 March 2012, Mr. Mërgim Hoxha filed with the Court the Referral bearing number KI32/12. The Referral bearing number KI31/12, was filed by Ms. Merita Hoxha and Referral bearing number KI33/12, was filed by Mr. Blerim Hoxha, all the three being children of the Applicant, Ms. Mykereme Hoxha.

36. On 4 July 2012, in compliance with Rule 37 (1) of the Rules of Procedure, the President ordered that Referrals KI31/12, KI32/12 and KI33/12 be joined with Referral no. KI27/12.

37. On 5 July 2013, the Court decided on the previous Applicants' referrals declaring the Referral inadmissible and manifestly ill-founded.

Summary of facts for Case KI67/15 and KI68/15

38. Based on the Applicants' Referral for Case KI67/15 and KI68/15, it results that on an unspecified date, the Applicants addressed the Supreme Court by a request for revision against Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, alleging that the aforementioned judgment was rendered by essential violation of the contested procedure provisions and erroneous application of the substantive law.

39. On 7 November 2014, the Supreme Court of Kosovo (Judgment Rev. no. 116/2012), rejected the request for revision. In the Judgment of the Supreme Court, the following is emphasized: "*The second instance court after correctly and completely determining the factual situation applied correctly the provisions of the contested procedure and the substantive law when it confirmed that the statement of claim of claimant-counter respondent is grounded, and rejected the respondent's-counterclaimant's appeal as such*".

40. As mentioned above, on 28 May 2015, the Applicants individually addressed the Court.

41. On 20 August 2015, by letter bearing number GJA. nr. 289/2015, the Basic Court in Peja notified the Court that the Applicants had refused to receive the decisions of the regular courts, which were duly served on them in a regular manner, except for Judgment Rev. no. 116/2012 of the Supreme Court, of 7 November 2014.

42. Based on the case file (the acknowledgement of receipt), it is noted that the Judgment of the Supreme Court Rev. No. 116/2012, of 7 November 2014, was served on the Applicant's representative before the Supreme Court, Mr. Blerim Hoxha on 27 January 2015.

43. Based on the case file it is noted that the Applicants were represented before the Supreme Court by Mr. Blerim Hoxha (who also filed Referral KI33/12 and who, based on the case file, results to be the son of Mrs. Mykereme Hoxha and brother of Mr. Mërgim Hoxha, who are the Applicants in the present case).

Applicants' allegations

44. The Applicants allege that Judgment C. no. 90/03 of the Municipal Court, of 9 January 2008, Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, and Judgment Rev. no. 115/2012 of the Supreme Court of Kosovo, of 7 November 2014, violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] as read in conjunction with Article 40 [Freedom of Expression], Article 41 [Right of Access to Public Documents], and Article 46 [Protection of Property], of the Constitution, as well as Article 6 [Right to a fair trial] as read in conjunction with Article 10, paragraph 1 [Freedom of expression] of the ECHR, as read in conjunction with Article 1 of Protocol No. 1 [Protection of Property] of the ECHR,.

45. The Applicants allege that they were denied the access to the case files and that they were never served with the decisions of the regular courts.

Admissibility of the Referral

46. The Court will examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

47. The Court recalls that as regards Judgment C. 90/03 of the Municipal Court, of 9 January 2008 and Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, which are challenged again by the Applicants, the Court has decided by its Resolution on Inadmissibility in cases KI27/12, KI31/12, KI32/12 and KI33/12, of 5 July 2013. The Court emphasizes that it has no jurisdiction to decide on the same legal matters whereon it has already decided, unless there are new allegations or new facts.

48. Under these circumstances, the Court will consider the Applicants' allegations only as regards Judgment Rev. no. 115/2012 of the Supreme Court of Kosovo, of 7 November 2014.

49. With this regard, the Court refers to Article 113 paragraphs 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."

50. 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."

51. In addition, the Court takes into consideration 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, [...]".

52. Moreover, the Court refers to Rule 27 (3) of the Rules of Procedure, which clarifies that:

"*When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred*;

53. Based on the case files, namely the acknowledgment of receipt submitted by the Municipal Court in Peja, the Court notes that Judgment Rev. no. 115/2012 of the Supreme Court of Kosovo, of 7 November 2014, was served on the Applicants' Representative on 27 January 2015.

54. The Court reiterates that any procedural action or inaction on the representatives part is attributable to the Applicant/Applicants (See, *Bekauri v. Georgia,* No. 14102/02 ECtHR, Judgment of 10 April 2012, paragraphs 22-25; and see, *mutatis mutandis,* Case no. KI02/10, Resolution on Inadmissibility, *Roland Bartezko,* §§ 25-28, 21 March 2011 and *Migliore and Others v. Italy,* No. 58511/13 *ECtHR*, Decision of 27 January 2014).

55. In this relation, the Court emphasizes that the deadline of 4 (four) months shall be counted from the day upon which the claimant or his/her representative has been served with a court decision, even if the Applicant himself has been informed later with the decision (See, *Otto v. Germany No. 21425/06, ECtHR*, Decision of 10 November 2009 and see, *mutatis mutandis, Celik v. Turkey, ECtHR, No. 52991/99, see also case Benet Praha, SPOL. S R.O v. Czech Republic,* No. 38354/06, *ECtHR*, Decision of 28 September 2010).

56. To determine whether the Applicants have submitted the Referral within the foreseen time limit of four (4) months, the Court considers as the date of receipt of the decision the date of receipt of the above mentioned Judgment by the representative of the Applicants, i.e. 27 January 2015. The Court notes that the Applicants have filed their Referral with the Court on 28 May 2015 (Thursday). This means that the Referral was submitted one day

after the expiry of the prescribed deadline. Consequently, the Referral has not been filed within the legal time limit specified in Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure.

57. The Court recalls that the Applicants in their Referral claim that they have never been served with the abovementioned Judgment and that they were not granted access to the case file. This claim constitutes the core of the Applicants' request for protection of their constitutional rights. However, the Applicants did not provide detailed explanations and do not further clarify their claims that their right to access the case files was violated, namely the Judgment of the Supreme Court has not been served on them. Furthermore, the Court notes that these Applicant's allegations are not in compliance with the case file sent by the Basic Court in Peja.

58. The Court wishes to reiterate that the mere referring to the provisions of the Constitution or alleging that they were violated without presenting convincing facts to confirm that such violation was made by a public authority, and without clarifying the circumstances that led to such alleged violation, do not provide sufficient grounds to convince the Court that the Constitution or the ECHR have been violated.

59. As regards the Applicant's request to hold a hearing session, the Court refers to Article 20 of the Law:

> *"1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.*
>
> *2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files".*

60. The Court considers that the case files of these referrals are sufficient to decide on this case, based on the wording of paragraph 2 of Article 20 of the Law.

61. Therefore, the Applicant's request to hold a hearing session is rejected as ungrounded.

62. In sum, the Court recalls that the objective of the 4 (four)-month legal deadline, under Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, is to promote legal certainty, by ensuring that the cases presenting the constitutional matters are reviewed within a reasonable time and that the decisions rendered previously are not continuously open to challenge (*See case O'Loughlin and others v. United Kingdom, No. 23274/04, ECtHR, Decision of 25 August 2005*).

63. Therefore, the Referral is to be rejected as inadmissible, because it is filed out of time.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 8 March 2016, 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

KI163/14, Applicant Enis Beqiri, Constitutional review of Decision Rev. no. 181/2014 of the Supreme Court of the Republic of Kosovo, of 8 July 2014

KI163/14, Resolution on Inadmissibility, of 18 December 2015, published on 3 June 2016

Keywords: *Individual referral, civil procedure, right to fair trial, judicial protection of rights, manifestly ill-founded, inadmissible referral*

In this case, the Applicant alleged that the regular courts violated his right to a fair trial, guaranteed by Article 31 of the Constitution and Article 6 of the European Convention on Human Rights, the right to work and exercise profession, guaranteed by Article 49 of the Constitution and the judicial protection of rights guaranteed by Article 54 of the Constitution, all for the fact that the regular courts did not take into account the content of the submissions of the Applicant regarding the filing of the statement of claim, but rejected it due to disregard of the legal time limit, namely because the statement of claim was filed prematurely.

The Court, after assessing all allegations and arguments raised in the Referral by the Applicant, concluded that the Referral should be declared as manifestly ill-founded because the Constitutional Court cannot assess the issues of fact and interpretation of substantive and procedural law. The Court further reasoned that its task under the Constitution, is to assess the proceedings viewed in entirety, conducted before the regular courts, if those courts have meet the guaranteed standards which are protected by the Constitution and the European Convention on Human Rights.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI163/14
Applicant
Enis Beqiri
Constitutional review of Decision Rev. no. 181/2014 of the Supreme Court of the Republic of Kosovo, of 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 was submitted by Mr. Enis Beqiri residing in Gjilan, Kosovo (hereinafter: the Applicant). He is represented by Mr. Avdullah Ismajli, a lawyer practicing in Gjilan, Kosovo.

Challenged decisions

2. The Applicant challenges the Decision (Rev. no. 181/2014, of 8 July 2014) of the Supreme Court, Decision (Ac. no. 4275/12, of 18 November 2013) of the Court of Appeal and Decision (C. no. 2505/2010, of 13 May 2011) of the Municipal Court in Prishtina.

3. The challenged decisions have rejected the Applicant's claim to re-instate him in his previous job at ProCredit Bank.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions, by which, allegedly, his 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), and the rights guaranteed by Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR) were 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 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 3 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. KI163/14 appointed Judge Altay Suroy as Judge Rapporteur and on the same date, by Decision KSH. KI163/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.

8. On 18 December 2014, the Court informed the Applicant of the registration of the Referral. On the same date, a copy of the Referral was sent to the Supreme Court and ProCredit Bank.

9. On 27 January 2014, the Court requested the Basic Court in Prishtina to submit the Applicant's case file C. no. 2505/2010.

10. On 30 January 2015, ProCredit Bank, in capacity of the interested party, submitted to the Court its comments in respect of the Referral.

11. On 1 July 2015, the President of the Court, Arta Rama-Hajrizi, by Decision KSH. KI163/14 replaced the member of the Review Panel Enver Hasani whose mandate in the Constitutional Court ended on 26 June 2015.

12. On 16 December 2015, the Applicant submitted another letter to the Court whereby he requested that the Referral is decided with urgency.

13. On 18 December 2015, the Review Panel considered the report of the Judge Rapporteur and decided on the inadmissibility of the Referral. On the same date, the President of the Court, in accordance with Rule 44 (4) of the Rules of Procedure assigned Judge Robert Carolan, as Presiding member of the Review Panel, to prepare the Resolution on Inadmissibility considering that the Judge Rapporteur was not among the majority.

Summary of Facts

14. On 25 October 2005, the Applicant concluded an employment contract for an indefinite period of time with ProCredit Bank, branch in Gjilan.

15. On 11 November 2010, ProCredit Bank, by Notification No. 11-517, notified the Applicant on the termination of his employment contract. The notification read as follows:

> *"According to the evaluation of your work performance made on 10 November 2010, it has been concluded that you failed to show satisfactory work performance. Based on the above, ProCredit Bank reserves the right to terminate the employment relationship pursuant to paragraph 7 c) and d) of the employment contract and in accordance with Article 5.10.1, section g) of the Personnel Policy. [...] You have the legal right to appear before the competent employment authorities, in order to look*

for any employment opportunity with other institutions for protection of your interests".

16. On 22 November 2010, the Applicant filed a claim against ProCredit Bank with the Municipal Court in Pristina requesting the annulment of the abovementioned Notification, reinstatement in his previous job and compensation of wages. Amongst other allegations, the Applicant stated that *"ProCredit Bank does not provide me with a right to appeal; therefore I am obliged to seek protection of my rights through courts [...]."*

17. In the meantime, the Applicant also filed a complaint with the Labour Inspectorate whereby he complained that ProCredit Bank had unlawfully dismissed him from work.

18. On 24 December 2010, the Labour Inspectorate (Report, No. 003665) concluded that the internal act of ProCredit Bank did not foresee a two-instance appeal procedure where employees could raise their complaints or claims, and it recommended that the Bank fix such flaws in order to be in line with the provisions of applicable law on labour disputes.

19. On 13 May 2011, the Municipal Court (Decision, C. No. 2505) rejected the Applicant's claim as inadmissible. It reasoned that the Applicant should have filed an appeal against the above-mentioned Notification with ProCredit Bank within fifteen (15) days of receipt, as provided by the applicable law. The Municipal Court concluded that since the Applicant did not avail himself of this opportunity, the claim was premature and as such was inadmissible.

20. The Applicant filed an appeal against the Decision of the Municipal Court with the Court of Appeal alleging a wrong determination of the factual situation and violation of material and procedural law. He requested from the Court of Appeal to annul the Decision of the Municipal Court as unlawful and remand the case for re-trial. Moreover, the Applicant reiterated again that ProCredit Bank's Notification provided a misleading general advice which made him file a claim directly with regular courts as the only means to protect his rights.

21. On 18 November 2013, the Court of Appeal (Decision Ac. No. 4275/12) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Municipal Court in Prishtina. The Court of Appeal held that: *[...] the first instance court has correctly acted when by the challenged decision dismissed the claim of the claimant, because two presumptions provided by Article 83 of the Law on Basic Rights of Labour Relations were not met. [...]"*

22. On 5 February 2014, the Applicant submitted a request for revision with the Supreme Court against the Decision of the Court of Appeal, due to essential violations of the contested procedure provisions, erroneous application of the substantive law and due to non-consideration of his submissions by the lower instance courts.

23. On 8 July 2014, the Supreme Court, (Decision Rev. no. 181/2014), rejected as ungrounded the revision of the Applicant and held that:

> *"Based on this situation of the case, the Supreme Court of Kosovo finds that the lower instance courts have assessed correctly when they have found that the claim of the claimant is inadmissible. [...] In the present case, the claimant did not request the protection of his rights before the competent authority of the respondent, therefore,*

according to the assessment of this court, due to the fact that the claimant did not request internal legal protection, the lower instance court have correctly applied the provisions of the contested procedure, when they found that the claim should be rejected as inadmissible. The Supreme Court of Kosovo assessed as ungrounded the allegations in the revision that the decisions of the lower instance courts were rendered by procedural violations, namely with erroneous application of the substantive law, as in fact, in this case we do not have to do with the erroneous application of the substantive law, when the claim is rejected due to lack of procedural presumption for filing the claim, namely for conduct of the proceedings".

Applicant's allegations

24. The Applicant alleges that the regular courts have violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution and his right guaranteed by Article 6 [Right to a fair trial] of the ECHR.

25. In respect of his right to fair and impartial trial, the Applicant alleges that the Supreme Court did not consider all of the Applicant's submissions that were relevant for the outcome of their decision. Specifically, the Applicant points out that the Report of the Labour Inspectorate, *"which found numerous violations committed by ProCredit Bank"*, was not taken into consideration by the Supreme Court.

26. In respect of his right to work and exercise a profession as well as judicial protection of his rights, the Applicant claims that such violation was allegedly committed by the regular courts when they refused to assess the merits of his claim. According to him, ProCredit Bank *"had not given him the right to appeal";* therefore, *"in the absence of any other available remedy, he addressed the competent court for the protection of his rights from employment relationship."* By not considering his claims, the Applicant claims that his rights protected by Article 49 and 54 of the Constitution were violated.

27. The Applicant further states that *"[...] the Supreme Court of Kosovo has not considered the case, but was based on the decisions of the first and second instance courts [...]"*. The Applicant further states that *"[...] the Executive Agency of the Labor Inspectorate, which clearly and officially emphasizes the irregularities, unlawfulness and injustice of the respondent ProCredit Bank, branch in Gjilan, where it concludes that the respondent ProCredit Bank for termination of the employment relationship of the claimant Enis Beqiri uses a "PHANTOM" paragraph, which does not exist at all, [...] concludes that the right to appeal was denied in the notification."*

28. The Applicant concludes by requesting from the Court to verify that: *"[...] Articles 49 and 54 of the Constitution of the Republic od Kosovo were violated, when the Applicant's [...] basic human rights were violated: the right to work at the moment of the unjust termination of the employment contract and the right to judicial protection of rights when he was not allowed to protect his subjective right guaranteed by the Constitution of Kosovo, the International Convention on Human Rights and applicable laws."*

Comments submitted

29. On 30 January 2015, ProCredit Bank, in its capacity as an interested party, submitted to the Court its comments regarding the allegations raised by the Applicant in his Referral. ProCredit Bank requested that the Court reject as ungrounded the allegations of the

Applicant since the *"[...] the facts presented by the Applicant do not in any way justify the allegation of violation of his constitutional rights, invoked by the Applicant and at the same time he has not sufficiently substantiated his claim"*.

Admissibility of the Referral

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

31. The Court notes that the Applicant is an authorized party according to the Constitution; challenges an act of a public authority, namely the Decision of the Supreme Court; has exhausted the necessary legal remedies; and, has submitted his referral within the four (4) months period after receiving the challenged decision.

32. The Applicant has clearly stated specific allegedly violated constitutional rights and freedoms and the challenged act as required by 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. Further, the Court is to assess whether the Applicant has met the requirement provided in the Rules of Procedure, namely Rule 36 (2), which provide:

> *(2) "The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *(d) the referral is not prima facie justified, or*
>
> *(e) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
>
> *(f) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
>
> *(g) the Applicant does not sufficiently substantiate his claim"*.

34. As mentioned above the Applicant alleges that the Decision (Rev. No. 181/2014, of 8 July 2014) of the Supreme Court was rendered in violation of his *"right to fair and impartial trial; right to work and exercise profession; and right to judicial protection of rights"* as respectively guaranteed by the Constitution and ECHR. Furthermore, the Applicant also alleges that the Decision (Ac. No. 4275/12, of 18 November 2013) of the Court of Appeal and Decision (C. No. 2505/2010, of 13 May 2011) of the Municipal Court in Prishtina were also rendered in violation of such rights.

35. With regards to his right guaranteed by Article 6 of the ECHR, the Applicant claims that the Supreme Court did not consider his submissions filed under the request for revision. According to the Applicant, if such submissions were to be considered, the outcome of the decision would have been in his favour. Therefore, the Applicant is mainly concerned as to

why his submissions in respect of the findings of the Labour Inspectorate were not considered by the Supreme Court.

36. In respect of this particular claim of the Applicant, the Court recalls that the Decision of the Supreme Court confirmed both decisions, that of the Court of Appeal and of the Municipal Court in Prishtina, which had decided that the claim of the Applicant was to be rejected as premature for failing to initiate any internal appeal procedure within ProCredit Bank. Therefore, the Court notes that all instances of the regular courts have rejected the Applicant's claim based on procedural grounds and without entering into the assessment of the substantive merits of the Applicant's claim. They have made this conclusion based on the fact that the claim of the Applicant was declared impermissible on procedural grounds for his failing to exhaust internal legal remedies that, as a matter of applicable law, he could have used within ProCredit Bank. The regular courts also concluded that ProCredit Bank had no obligation to notify the Applicant of any legal rights that he may or may not have had with respect to his legal dispute with the Bank.

37. In this regard, the Constitutional Court is not in a position to declare that the regular courts violated the Applicant's constitutional rights as alleged by him simply because they did not enter into the merits of his claim. The regular courts have decided not to assess the claims of the Applicant because they considered that he had not exhausted the internal legal remedies provided by law and have reasoned their decisions whilst referring to provisions of the applicable law . The Constitutional Court cannot replace their reasoning in this respect as they are in the best position to interpret the material and procedural law.

38. With regards to his rights guaranteed by Article 49 and 54 of the Constitution, the Applicant claimed that the regular courts wrongly applied the material law when rejecting his claim as inadmissible and premature. He considers that the regular courts should have reviewed the merits of the claim mainly because ProCredit Bank did not provide him *"with a right to appeal"* in the Notification (No. 11-517, of 11 November 2010), through which he was dismissed from work.

39. The Court notes that the above-mentioned Notification did not provide a legal advice, and that this has been the Applicant's main allegation of a violation of his rights committed by the ProCredit Bank. The Applicant has raised this point in all of his submissions before the regular courts and considered that his claim should have been decided on the merits considering that he was allegedly *"mislead"* by ProCredit Bank's lack of legal advice.

40. The Court recalls that, in accordance with Article 113.7 of the Constitution, its primary duty is to review the decision(s) of a public authority, in this particular case those of the regular courts and ascertain whether such decision(s) have been rendered in compliance with the constitutional rights provided therein. It is, therefore, not the duty of the Constitutional Court to review the Notification of the ProCredit Bank and assess the factual situation, as requested by the Applicant.

41. In this respect, the Court notes that the claim of the Applicant has been reviewed by the Municipal Court in Prishtina, the Court of Appeal and the Supreme Court. All these instances have reasoned their decisions referring to the provisions of the law in force when rejecting the Applicant's claim as inadmissible and premature. The regular courts decided that the Applicant's claim was premature and therefore inadmissible because the Applicant failed to appeal the Notification of ProCredit Bank within the institution itself.

In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.

42. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegation of violations of the law allegedly committed by the Court of Appeal when it rejected his appeal filed against the Decision of the Municipal Court in Prishtina. The Supreme Court stated that: "*[...] the lower instance courts have assessed correctly when they found that the claim of the claimant is inadmissible. [...] In the present case, the claimant did not request the protection of his rights before the competent authority* [ProCredit Bank] *[...]. [...] due to the fact that the claimant did not request internal legal protection, the lower instance court have correctly applied the provisions of contested procedure, when they found that the claim should be rejected as inadmissible.*"

43. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, Court of Appeal or Municipal Court in Prishtina, unless and in so far as it may have infringed rights and freedoms protected by the Constitution.

44. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of their rights as protected by the Constitution and ECHR.

45. The Court notes that the Applicant had ample opportunities to present his case before the regular courts. The issue of the applicable law has been extensively addressed by all regular courts. The Court of Appeal and the Supreme Court have responded to the claims of the Applicants as to why his claim has been considered as premature and thus inadmissible by the court of lower instance.

46. In this respect, it is important to note that the Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

47. In relation to this, the Court notes that the reasoning referring to the request of the Applicant to review the case on its merits in the Decision of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal and the Municipal Court in Prishtina have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

48. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violations of the constitutional rights invoked by the Applicant.

49. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and should be declared inadmissible pursuant to Rules 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rule 36 (2) (b) of the Rules of Procedure, on 18 December 2015, by majority

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. TO DECLARE this Decision effective immediately.

Presiding Judge **President of the Constitutional Court**

Robert Carolan Arta Rama-Hajrizi

KI01/15, Applicant: Fahredin Gashi, Constitutional Review of Judgment no. PML. KZZ 157/2014 of the Supreme Court of Kosovo, of 2 October 2014

KI 01/15, resolution on inadmissibility of 15 March 2016, published on 3 June 2016

Keywords: *individual referral, war crime, criminal proceedings, right to fair and impartial trial, manifestly ill-founded.*

On 23 November 2011, the Applicant was convicted by the District Court of Prishtina (Judgment P. No. 371/10) of the criminal offence of War Crimes against the Civilian Population, under Articles 22 and 142 of the Criminal Code of SFRY, Common Article 3 of the Geneva Conventions of 12 August 1949, and Article 4 of Protocol II of 8 June 1977 additional to the Geneva Conventions. The Court sentenced the Applicant to 18 years of imprisonment, in which the time spent in house detention from 14 July 2010 until 18 August 2010 and in detention on remand since 19 August 2010 was to be credited in the sentence.

On 2 October 2014, the Supreme Court, by Judgment Pml. Kzz 157/2014, upheld the Applicant's conviction for War Crimes Against a Civilian Population.
The Court concluded that the District Court, the Court of Appeal and the Supreme Court made detailed factual findings with respect to the credibility of the cooperative witness and the additional corroborating evidence to support the decision that the Applicant was proven guilty beyond a reasonable doubt of committing a War Crime Against the Civilian Population.

The Court found that all Applicant's arguments, which were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decision were set out at length, and, accordingly, the proceedings before the regular courts, taken as a whole were fair. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI01/15
Applicant
Fahredin Gashi
Constitutional Review of Judgment no. PML.KZZ 157/2014 of the Supreme Court of Kosovo, of 2 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Fahredin Gashi (hereinafter: the Applicant), represented by Mr. Tahir Rrecaj, a lawyer and advocate in Prishtina, Kosovo.

Challenged Decision

2. The Applicant challenges Decision PML. KZZ 157/2014, of the Supreme Court of Kosovo, of 02 October 2014, and impliedly the Judgment of the Court of Appeals of Kosovo, Decision PAKR 1175/12 of 10 March 2014, and the Judgment of the District Court of Prishtina, Decision P. Nr. 371/10, dated 23 November 2011.

3. The challenged decision was served on the Applicant on 03 November 2014.

Subject Matter

4. The subject matter is the constitutional review of the Decision PML.KZZ 157/2014, of the Supreme Court of Kosovo, of 02 October 2014.

5. The Applicant claims that the challenged Decision is contrary to, Article 24 [Equality Before the Law] and Article 31 [Right to Fair Trial and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] and Article 2 of Protocol VII to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), and Article 10 of the Universal Declaration of Human Rights, and Article 14 of the International Covenant on Civil and Political Rights and its Protocols (hereinafter: ICCPR).

Legal Basis

6. The Referral is based on Articles 113.7 and 21.4 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

7. On 09 January 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 13 January 2015, the President of the Court, by Decision GJR. KI01/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI01/15, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

9. On 27 March 2015 the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit a power of attorney.

10. On the same date, the Court submitted a copy of the Referral to the Supreme Court of Kosovo, the State Prosecutor of Kosovo and the Special Prosecution of Kosovo.

11. On 01 April 2015 the Applicant submitted a power of attorney.

12. On 05 May 2015 the Chief State Prosecutor for the Republic of Kosovo submitted a response with the Constitutional Court to the referral of the Applicant.

13. On 06 May 2015 the Court provided a copy of the submission of the Chief State Prosecutor to the Applicant.

14. On 01 July 2015, by Decision KSH. KI01/15, the President of the Court appointed Judge Ivan Čukalović as a member of the Review Panel replacing Judge Kadri Kryeziu, whose mandate in the Constitutional Court had ended on 26 June 2015.

15. On 15 March 2016 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

16. On 15 June 1999, in Vorigovc Village, in the Municipality of Lipjan, S. G. was murdered while he was sleeping in his home. The Applicant, while accompanied by N. B., was charged with the crime of War Crimes against a Civilian Population for the murder of S.G..

17. On 23 November 2011 the Applicant was convicted by the District Court of Prishtina (Judgment P. No. 371/10) of the crime of War Crimes against the Civilian Population, under Articles 22 and 142 of the Criminal Code of SFRY, Common Article 3 of the Geneva Conventions of 12 August 1949, and Article 4 of Protocol II of 8 June 1977 additional to the Geneva Conventions. The Court sentenced the Applicant to 18 years of imprisonment,

in which the time spent in house detention from 14 July 2010 until 18 August 2010 and in detention on remand since 19 August 2010 was to be credited in the sentence.

18. With respect to the testimony of the Applicant's co-defendant, the cooperative witness N.B., the District Trial Court made detailed and explicit findings.

19. On 16 May 2012, defense counsel of the Applicant filed an appeal against the Judgment with the then competent second instance Court, the Supreme Court of Kosovo on the grounds of (*i)* substantial violations of the provisions of the criminal procedure (Article 403 paragraph (1) subparagraph 12) and paragraph (2) of the Kosovo Criminal Code of Procedure -2004 *(*hereinafter: KCCP)), (*ii)* erroneous or incomplete determination of the factual situation (Article 405 paragraph (3) of the KCCP), (*iii)* violation of the criminal law (Article 40*4* paragraph (1) subparagraph 4) of the KCCP in conjunction with article 2 paragraph (2) of the Criminal Code of Kosovo -2004 (hereinafter: CCK)) and (*iv)* decision on the criminal sanction (the appeal does not refer to any Articles of the KCCP). Against this background the defence counsel proposed that the appeal is granted, the impugned Judgment is modified in the form that the Applicant is acquitted from all charges, or in the alternative the Judgment is annulled and the case is returned for re-trial to the court of first instance.

20. On 10 February 2014 the Court of Appeals – now the competent second-instance court – held a session to hear the arguments of defense counsel, the Applicant and the prosecutor regarding the appeal against the Judgment.

21. Thereafter, the Court of Appeals partially granted the appeal filed in favor of the Applicant, and reduced the punishment from 18 years to 14 years of imprisonment.

22. In reviewing the District Court verdict and judgment, the Court of Appeals made detailed and explicit findings with respect to the credibility of the cooperative witness N. B. and the sufficiency of the evidence in this trial.

23. On 5 June 2014 the Applicant's defense counsel filed a request for protection of legality with the Supreme Court against the Judgment of the Court of Appeals and that of the District Court of Prishtina on the grounds of (*i)* violation of the criminal law (Article 404 paragraph (1) subparagraph (4) of the KCCP in conjunction with Articles 22 and 142 of the CCK) and (*ii)* substantial violation of the provisions of the criminal procedure Article 403 paragraph (1) subparagraphs (3), (8) and (12) and paragraph (2) of the KCCP).

24. On 2 October 2014 the Supreme Court, by Judgment Pml. Kzz 157/2014, upheld the Applicant's conviction for War Crimes Against a Civilian Population but modified the Judgment of the Court of Appeals in order to include in the enacting clause that the time spent in house detention from 14 July 2010 until 18 August 2010 and in detention on remand since 19 August 2010 by the Applicant is to be credited in the sentence.

25. The Supreme Court, in reviewing the Applicant's request for protection of legality, carefully reviewed the fairness of the trial proceedings and the handling of evidence and found that there had been substantial evidence to support the verdict and that the trial proceedings had been fair.

Applicant's Allegations

26. The Applicant alleges that his rights pursuant to Articles 24 and 31 of the Constitution, Article 6 and Protocol VII of Article 2 of the ECHR, and Article 14 of the ICCPR were violated by the regular courts of Kosovo in the judgment finding him guilty on 23 November 2011 of the crime of war crimes against a civilian population.

27. He specifically alleges that he was denied a fair and impartial trial because:

    a. Confirmation of the Indictment was made without the court ever holding a formal hearing to confirm the indictment;
    b. The court's verdict and judgment lacked reasoning;
    c. Violation of the principle of "the contradictory";
    d. Violation of essential provisions of the Criminal Procedure Code;
    e. Presence of the other accused while the Applicant was interviewed in the Procedure;
    f. Violation of the principle of equality of arms;
    g. Violation of the principle *in dubio pro reo*;
    h. Non-administration of submitted evidence;
    i. Holding of the session despite the health/mental condition of the Applicant;
    j. Lack of the review in entirety of the Appeal;
    k. Grounding the Judgment only on the statements of the cooperative witness; and
    l. He did not receive the written verdict within a reasonable period of time.

28. The Applicant requests the Court to:

    a. grant the Applicant's Referral as grounded;
    b. order the hearing session, pursuant to Rule 39 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo; and
    c. ascertain that the Applicant's individual rights, guaranteed by Articles 24 and 31 of the Constitution of the Republic of Kosovo, Article 6 of the European Convention on Human Rights, Article 10 of the Universal Declaration of Human Rights, and Article 14 of the International Covenant on Civil and Political Rights, have been violated by the Special Prosecution of the Republic of Kosovo, District Court in Prishtina, Court of Appeals of Kosovo, and Supreme Court of Kosovo.

Response of the Chief State Prosecutor

29. *"The State Prosecutor submits that the Referral of the Applicant does not meet the requirements set forth by Article 48 of the Law on Constitutional Court and Rule 29 paragraph (2) items (e), (f) and (g) of the Rules of Procedure. It is entirely unclear which judicial decision the Applicant challenges before the Constitutional Court. The Referral is silent on the constitutional rights and freedoms which the Applicant alleges that had been violated. The Applicant fails to provide clear and concise details of the underlying facts and demonstrate the correlation between these facts and the alleged violation. Finally, there is no relief specified in the Referral."*

Admissibility of the Referral

30. 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.

31. In this respect, the Court refers to Article 113.7 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".*

32. The Court also recalls 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".*

33. In addition, the Court takes into account Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which provide 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:*
>
> > *(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."*

34. The Court notes that the Applicant's allegations primarily relate to the manner in which the evidence presented by the cooperative witness, N.B., was handled. The Applicant considers that the cooperative witness was not credible and that there was not sufficient other evidence to cooroborate this testimony. The Applicant alleges that the courts did not adequately examine the credibility of the cooperative witness in reaching their judgments, and did not take his arguments as to this credibility into account.

35. The Court recalls Article 31 of the Constitution, which states, *inter alia*, that:

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

2. Everyone is entitled to a fair and impartial 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.

[...]

4. Everyone charged with a criminal offence has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.

5. Everyone charged with a criminal offence is presumed innocent until proven guilty according to law.

[...]"

36. The Court also recalls Article 6 of the ECHR, which states, *inter alia*, that:

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

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

[...]

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;

[...]"

37. The Court recalls that Article 31 of the Constitution and Article 6 of the ECHR pertaining to the right to a fair trial are essentially concerned with whether an applicant was afforded ample opportunities to state his case and contest the evidence that he considered false. The right to a fair trial enshrined in the Constitution and the ECHR are not concerned with the question whether the domestic courts reached a right or wrong decision with respect to the established facts or law.

38. The Court considers that to find that the Applicant did not receive a fair trial pursuant to Article 31 of the Constitution or Article 6 of the ECHR, this Court would have to find that the verdict and judgment of the Supreme Court and the lower courts were not reasoned. In addition, the Court would have to find that there was not sufficient corroboration of the testimony of the cooperative witness so as to make his testimony credible enough to support beyond a reasonable doubt the verdict and judgment of guilt.

39. The Court recalls that if a judgment of conviction is not reasoned, there is a presumption that a defendant did not receive a fair trial. The Court also notes that a judgment of

conviction cannot be based solely on the uncorroborated testimony of a cooperative witness.

40. However, the Court cannot substitute its judgment for that of the District Court with respect to what the evidence did or did not prove in the Applicant's case. To find that there was a constitutional violation of the right to a fair trial in this case with respect to the sufficiency of the evidence, this Court would have to find that not only the reasoning of the District Court, but the reasoning of the Court of Appeals and the Supreme Court with respect to the corroboration of the cooperative witness' testimony was so flawed that there was no corroboration and that their judgments were not reasoned.

41. This Court cannot make that finding in this case. Indeed, the District Court, the Court of Appeals and the Supreme Court made detailed factual findings with respect to the credibility of the cooperative witness and the additional corroborating evidence to support the verdict that the Applicant was proven guilty beyond a reasonable doubt of the crime of committing a War Crime Against the Civilian Population.

42. Therefore, the Court concludes that this allegation should be rejected as inadmissible.

43. With respect to whether alleged violations of the Criminal Procedure Code, the principle of equality of arms and the alleged failure of the District Court to admit certain proposed evidence as well as the Court's rejection of the Applicant's alibi defense, his not receiving the written verdict of guilty within the time prescribed by the Criminal Procedure Code, the Applicant has failed to demonstrate how any of these alleged violations, if they did occur, resulted in a violation of his constitutional right to a fair trial. Therefore, those allegations also must be rejected as inadmissible.

44. With respect to whether the Applicant's alleged health problems may have denied him the right to effectively assist his lawyer in his defense during his trial, the Court notes that there is no evidence that the Applicant or his lawyer ever formally raised that issue in a timely manner with the District Court belore or during the trial. Nor is there any evidence that the Applicant suffered from a health condition to such an extent that he could not assist his own lawyer in preparing an adequate defense during his trial.

45. The Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the Supreme Court. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. It is the role of the Constitutional Court to determine whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken (see Case: *Edwards v. United Kingdom*, no. 13071/87, Report of the European Commission of Human Rights, of 10 July 1991).

46. In the present case, the Court did not find that the pertinent proceedings before the regular courts were in any way unfair or arbitrary *(*see, *mutatis mutandis, Shub v. Lithuania,* ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009*)*.

47. Therefore, the Court concludes that the Applicant did not substantiate his claim on constitutional grounds and did not provide evidence indicating how and why his rights and freedoms, as protected by the Constitution, were violated by the challenged decision.

48. The Court concludes that the Applicant's Referral is, on a constitutional basis, manifestly ill-founded, in accordance with Article 48 of the Law and Rules 36 (1) (d) and 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rules 36 (1) (d) and 36 (2)(d) of the Rules of Procedure, in the session held on 15 March 2016,

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for a public hearing;

III. TO NOTIFY the Parties of this Decision;

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

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Arta Rama-Hajrizi

KI159/15 Applicant Sabri Ferati Request for Constitutional Review of Decision P. no. 499/15 of the Court of Appeal of Kosovo, of 29 September 2015.

KI159/15, Resolution on inadmissibility, approved on 12 April 2016 and published on 14 June 2016.

Key words: individual referral, criminal procedure, right to fair and impartial trial, equality before law, judicial protection of rights, ratione materiae

The Applicant contested the Decision of the Court of Appeal of Kosovo, considering that the challenged judgments are unlawful because the first and second instance judgments contain essential violations of the criminal provisions, thus violating the right to equality before law.

The Court assessed that the request of the Applicant is about the reopening of the procedure. The Court notes that in this procedure, the regular courts decided solely on the fulfilment of the procedural requirements for the reopening of the proceedings, and not on the merits of the case, which was completed by final judgment of the Supreme Court on 12 February 2015.

The Court assessed that the right to fair trial and public hearing do not apply to these procedures. Therefore, the appeal of the Applicant was rejected as incompatible *ratione materiae* with the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI159/15
Applicant
Sabri Ferati
Request for constitutional review of Decision P. no. 499/15 of the Court of Appeal of Kosovo, of 29 September 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Sabri Ferati from Podujeva, Republic of Kosovo (hereinafter, the Applicant), who is represented by Mr. Mahmut Halimi, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Decision P. no. 499/2015, of the Court of Appeal of Kosovo, of 29 September 2015.

Subject natter

3. The subject matter is the constitutional review of the decision of the Court of Appeal, of 29 September 2015, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo (hereinafter: the Constitution), as well as Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

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 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 29 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 22 January 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

7. On 2 February 2016, the Court informed the Applicant and the Court of Appeal about the registration of the Referral.

8. On 12 April 2016, 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 19 September 2013, the Applicant caused a traffic accident in which seven (7) persons sustained serious bodily injuries, due to which 2 (two) persons died on the spot.

10. On 21 November 2013, the Basic Public Prosecutor's Office filed an indictment against the Applicant for the criminal offence of endangering public traffic under Article 378 paragraph 9 in conjunction with paragraph 1 of the Criminal Code of Kosovo (hereinafter CCK).

11. On 17 March 2014, the Basic Court in Prishtina - Branch in Podujeva (hereinafter: the Basic Court) rendered Judgment [P. no. 969/13], which declared the Applicant guilty and sentenced him to imprisonment of six (6) years. In the enacting clause of the Judgment reads:

> *"[...] On the basis of the analysis and the conclusions in relation to this accident, the group of experts has provided their opinion that it came to the accident due to the error of the driver of "Toyota Land Cruiser" vehicle who has undertaken the action of overpassing without making sure that there is sufficient space in the road for the full realization of the overpass (considering the distance and the speed of the vehicle from the opposite side).*
> *[...]*
> *In the case of rendering the Decision, the court has analyzed the Defense of the Accused person filed by his Defense Counsel...*
> *[...]*
> *The court on the basis of a detailed determined factual situation, witness statements, the evidence presented, professional expertise, and taking the allegations and the evidence of defense, decided as in the enacting clause of this judgment... "*

12. The Applicant filed an appeal with the Court of Appeal against the Judgment [P.br.969/13], of the Basic Court.

13. On 23 September 2014, the Court of Appeal rendered Judgment [PA.1. no. 769/2014], which partially approved the appealing allegations of the Applicant, so that it modified

the imprisonment sentence of 6 (six) years to imprisonment sentence of five (5) years. The reasoning of the Judgment reads:

> *"[...]*
> *As to the Applicant's allegations that the first instance court has erroneously and incompletely determined the factual situation, the court considers as ungrounded, as the court took all the actions necessary to render this judgment.*
> *[...]*
> *As to the Applicant's allegations related to the length of the Applicant's imprisonment sentence, the court considers them as partially grounded, because the first instance court did not take into consideration the mitigating circumstances of the Applicant..."*

14. The Applicant filed a request for protection of legality with the Supreme Court against the Judgment [P. no. 969/13] of the Basic Court and Judgment [PA.1. no. 769/2014] of the Court of Appeal.

15. On 12 February 2015, the Supreme Court rendered Judgment [Pml. No. 11/2015] which rejected the Applicant's request as ungrounded. In conclusion of the Judgment is stated:

> "*[...] all on what the Applicant based his request for protection of legality, the Basic Court and later the Court of Appeal, analyzed in details and comprehensively, provided their full clear reasons which are correct and lawful and are approved by the Supreme Court, therefore it does not see it necessary to make their assessment once again."*

16. On 18 May 2015, the Applicant filed the request with the Basic Court in Prishtina, requesting the reopening of the criminal proceedings.

17. On 21 August 2015, the Basic Court in Prishtina rendered Decision, which rejected the request for the reopening of procedure as ungrounded with the reasoning:

> *"On the basis of the assessment of this Court in the request filed for the reopening of the criminal proceeding no new facts or pieces of evidence have been presented, which were unknown to the court at the moment of rendering the Judgments mentioned above, which itself or along with previous pieces of evidence is likely to reason the innocence of the convict or his punishment on the basis of a softer criminal provision as provided by Article 423, paragraph 1, item 1.3 of CPCRK, therefore the facts and the pieces of evidence to which the Defense Counsel of the convict has referred himself do not offer reasons for allowing the reopening of the criminal proceedings."*

18. Within legal deadline, the Applicant filed appeal with the Court of Appeal against the Decision of the Municipal Court.

19. On 29 September 2015, the Court of Appeal rendered Decision [PN. No. 499/2015], which rejected the Applicant's appeal as ungrounded, with the reasoning: *"The criminal panel of the Court of Appeals of Kosovo, following the review of the case files, assessment of the appealed allegations of the convict for the reopening of the criminal proceeding found that the appeal is ungrounded, due to the reason that the convict, in terms of Article 425, paragraph 2, as read in conjunction with Article 423, paragraph 1, sub-paragraph 1.3*

of CCRK, has not offered new pieces of evidence which are a legal basis for allowing the reopening of the criminal proceeding of the final Judgment…"

Applicant's allegations

20. The Applicant mentioned in his referral: *"I consider that the challenged judgments are unlawful because the first and second instance judgments contain essential violations of the criminal provisions, which violated the criminal law to the detriment of the convict. In particular, have not complied with the provisions of the Constitution (Article 24, "Equality before the law," Article 31, "The right to a fair and impartial trial," Article 54 "Judicial Protection") and the provisions of the Criminal Procedure Code of the Republic of Kosovo, and all these fundamental rights and freedoms, as well as the procedural safeguards guaranteed by the Constitution and the Criminal Code should be interpreted in accordance with international agreements and instruments."*

21. The Applicant addresses the Court with the proposal: *"that the Constitutional Court of the Republic of Kosovo declares unconstitutional all decisions and judgments, and to order that all these judgments and decisions be annulled and that the case be remanded for retrial and decision to the court of first instance (Basic Court - Department of General Crimes- Branch in Podujeva)."*

Admissibility of the Referral

22. In order to be able to adjudicate the Applicant's complaint, the Court needs to first examine whether the complaint 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, Article 113 paragraph 7 of the Constitution provides:

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

24. Article 49 of the Law, also 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."

25. In this case, the Court refers to Rules 36 (1) (c) and (3) (e) 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.

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

[...]

(e) the Referral is incompatible ratione materiae with the Constitution".

26. In the present case, the Court by examining the case file found that the Applicant had two proceedings before the regular courts on which the decisions were rendered on different issues.

27. The first procedure against the Applicant was initiated by the Basic Public Prosecutor's Office on 21 November 2013. That procedure was completed on 12 February 2015 by Judgment [Pml. No.11/2015] of the Supreme Court, which rejected the request for protection of legality of the Applicant, by which the Judgment [PA.1. no .769/2014] of the Court of Appeal, which found him guilty, has become final.

28. The Court notes that in the abovementioned proceedings was decided on the grounds of the merits of allegations of the prosecution that the Applicant had committed the criminal offence of endangering public traffic under Article 378 paragraph 9 in conjunction with paragraph 1 of the CCK, for which he was sentenced by final decision.

29. The determination of the Applicant's criminal charge was concluded by a final decision on 12 February 2015, whereas the Applicant's Referral was submitted on 29 December 2015, which is more than four months after the final decision.

30. Therefore, under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures the Referral in relation to the first set of proceedings must be rejected as out of time.

31. The Court reiterates that the objective of the four months legal deadline is of the 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).

32. As regards the second procedure, the Court notes that these concern a request submitted by the Applicant to have the case against him reopened. The Applicant had initiated it on 21 August 2015, when he submitted a request for the reopening of the criminal proceedings before the Basic Court.

33. That procedure was completed on 29 September 2015, when the Court of Appeal rendered decision [PN. no. 499/2015], which rejected as ungrounded the request for reopening of proceedings, pursuant to Article 423 paragraph 1, sub-paragraph 1.3 of the CPCK, which defines the standards that must be met as a basis for the reopening of the proceedings.

34. In this regard, the Court notes that in this procedure, the regular courts decided solely on the fulfillment of the procedural requirements for the reopening of the proceedings, and not on the merits of the case, which was completed by final judgment of the Supreme Court on 12 February 2015.

35. The Court emphasizes Article 31 of the Constitution provides that, *"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…"*.

36. The second set of proceedings regarding the re-opening of the case, in fact, do not determine any criminal charges, as these were determined in final instance by the Supreme Court on 12 February 2015.

37. As such, the right to a fair and public hearing does not apply to these proceedings. Therefore, the Applicant's complaint about the second set of proceedings must be rejected as *incompatible ratione materiae* with the Constitution, because a request for reopening of criminal proceedings cannot be considered to determine a criminal charge within the meaning of the Constitution (see, by analogy, *Judgment of the European Court of Human Rights of 10 April 2001, no. 36445/97, paragraph 86*).

38. For the reasons set out above in paragraphs 28 and 35 the Referral is to be declared inadmissible, in accordance with Article 49 of the Law and Rules 36 (1) (c) and (3) (e) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 49 of the Law and Rules 36 (1) (c) and (3) (e) of the Rules of Procedure, in the session held on 12 April 2016, 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

KI145/15, Applicant Florent Muçaj, Constitutional review of Decision no. 321/2015 of the Kosovo Prosecutorial Council, of 5 November 2015

KI145/15, Resolution on Inadmissibility rendered on 14 March 2016 and published on 14 qershor 2016

Keywords: *Individual referral, administrative procedure, right to fair and impartial trial, election and participation rights, premature referral, non-exhaustion of legal remedies, interim measure*

The Basic Court in Prishtina rejected the Applicant's request for imposition of interim measures against the Decision of Kosovo Prosecutorial Council for the election of a new member.

The Applicant alleged among other violation of Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], and Article 4 [Judicial Protection of Rights] of the Constitution. The Applicant also requested the imposition of interim measure.

The Constitutional Court considered among the other that the Applicant's Referral is premature, because of non-exhaustion of all legal remedies, in accordance with the Law and the Constitution. The Referral was declared inadmissible due to non-exhaustion of legal remedies. The request for interim measure was also rejected as ungrounded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI145/15
Applicant
Florent Muçaj
Constitutional review of Decision no. 321/2015 of the Kosovo Prosecutorial Council, dated 5 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Florent Muçaj, residing in Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Decision no. 321/2015 of the Kosovo Prosecutorial Council (hereinafter, the KPC) dated 5 November 2015, on announcing the Vacancy for the election of the civil society member in the composition of the KPC, and Vacancy Announcement no. 322/2015, published on 21 November 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated Articles 24 [Equality before the Law], 31 [Right to fair and impartial trial], 32 [Right to Legal Remedies], 45 [Freedom of Election and Participation], 54 [Judicial Protection of Rights] of the Constitution and Articles 6 and 13 of the European Convention on Human Rights (hereinafter, ECHR) and Article 25 of the International Covenant on Civil and Political Rights (hereinafter, ICCPR).

4. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely to suspend the recruitment procedure of the election of a new member by the KPC.

Legal basis

5. 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).

Proceedings before the Court

6. On 8 December 2015 the Applicant submitted the Referral to the Court.

7. On 17 December 2015 the President appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 17 December 2015 the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the KPC.

9. On 30 December 2015 the Organizations of Civil Societies submitted a letter of support for the Applicant.

10. On 14 January and 12 February 2016 the Applicant submitted additional information related to his referral.

11. On 14 March 2016 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. On 9 September 2014 the Applicant was elected as a member of the KPC from the ranks of civil society (Decision no. 260/2014), with a 5-year mandate, as foreseen by the Law on the KPC. According to the applicant no official appeals were received by the KPC contesting the procedure or any other aspect of his election.

13. On 15 July 2015 the Law no. 05/L-035 on amending and supplementing the Law no. 03/L-224 on the Kosovo Prosecutorial Council entered into force.

14. Article 3 of the Law no. 05/L-035 on amending and supplementing the Law no. 03/L-224 on the Kosovo Prosecutorial Council, amended the procedure in which the 3 (three) non-prosecutor members of the KPC are elected. According to this Article, the KPC member from the ranks of civil society shall be elected by the Assembly of Kosovo after a public competition announced by the KPC.

15. On 5 November 2015 the KPC (Decision no. 321/2015), pursuant to Article 3 of the Law on KPC decided to announce the competition for the election of the non-prosecutor member from the ranks of civil society.

16. On 21 November 2015 the KPC published the Vacancy announcement no. 322/2015 for the election of the non-prosecutor member from the ranks of civil society.

17. On 23 November 2015 the Applicant filed a Claim before the Department for Administrative Matters of the Basic Court requesting the annulment of Decision no. 321/2015 of the KPC, of 5 November 2015, and a confirmation of his 5 year mandate in

accordance with his employment contract. On the same date, the Applicant also submitted a request to impose an interim measure, namely, to suspend or postpone the procedure for the election of a new member to the KPC.

18. On 24 November 2015 the Basic Court in Prishtina (Decision A. no. 1992/2015) rejected the Applicant's request for interim measure stating that:

> *"The Court finds that [the Applicant] did not attach to his proposal a fact based on any evidence which could have made his allegations credible, as to how the execution of the challenged Decision by Claim would have been to his detriment, that the damage would be difficult to repair and that the postponement is not in contradiction with the public interest, which is a legal condition which must be proven by the Claimant, so that this Court may decide on the postponement of the execution of the Decision".*

19. The Applicant filed an appeal with the Court of Appeal against the decision of the Basic Court of 24 November 2015, which rejected his request for an interim measure.

20. On 12 February 2015 the Applicant notified the Court that the Court of Appeal rejected the appeal submitted by the applicant against the decision of the Basic Court of 24 November 2015 relating to his request to impose an interim measure.

Applicant's allegations

21. The Applicant claims that decision for the announcement of the vacancy and the vacancy announcement by the KPC violated his rights guaranteed by the Constitution namely, Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 45 [Freedom of Election and Participation], Article 54 [Judicial Protection of Rights] and Articles 6 and 13 of the European Convention on Human Rights (ECHR).

22. The Applicant alleges *"that on the occasion and moment of voting for rendering Decision no. 321/2015 in the KPC meeting of 05 November 2015, the normal 5 (five)- year mandate of three (3) KPC members had expired. Based on this rationale the KPC, had not reached the quorum necessary for holding the meeting of 05 November 2015, although it was held"*

23. The Applicant further claims that the challenged decision for the announcement of the vacancy is in contradiction with the case law of the Constitutional Court (he refers specifically to the cases: KO29/12, KI 48/12, KI99/14 and KI 100/14).

24. In relation to the exhaustion of legal remedies the applicant claims that "*the procedures before the Basic Court last an average of two years and thus in the Applicant's case due to the urgency of the matter make this remedy ineffective*".

25. The Applicant concludes by requesting from the Court the following:

> *"To ascertain the violation of his rights, based on the allegations mentioned above, foreseen by the Constitution (Articles 22, 24, 31, 32, 45, 54, and 53), ECHR (Articles 6 and 13), ICCPR (Article 25) and the ECtHR case law, cases KO 29/12 and KO48/12 of 20 July 2012, and cases no. KI99/14 and KI100/14 of 08 July 2014;*

To annul the KPC Decision no. 321/2015, of 05 November 2015 and Vacancy Announcement no. 322/2015, of 21 November 2015, as well as the process for the election of the civil society member in the KPC based on this Vacancy and
To confirm his 5 (five)-year mandate as a KPC member from the civil society and prevent such mandate from being curtailed by Decision no. 321/2015 or by any other act, as in cases KO29/12 and KO48/12".

Admissibility of the Referral

26. 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.

27. 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."

28. 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".

29. 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".

30. The Court observes that the Applicant's case is still pending, for decision on its merits, before the Department for Administrative Matters of the Basic Court (only the legal remedies related to the request for interim measure have been exhausted). It follows, therefore, that the Applicant has not exhausted all legal remedies in accordance with Article 113.7 of the Constitution.

31. The Applicant alleges that he does not have legal remedy at his disposal, which he can pursue effectively before the regular courts. His major argument in this regard is that "*the procedures before the Basic Court last an average of two years and thus in the Applicant's case due to the urgency of the matter make this remedy ineffective.*"

32. The Court considers that in order for the Applicant to be exempt 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. (See case no. KI116/14, *Applicant Fadil Selmanaj,* Constitutional Court of Kosovo, Resolution on Inadmissibility of 19 January 2015).

33. The Court refers to the interpretation of the European Court of Human (hereinafter, ECtHR), which underlines the importance of administering justice without delays which might jeopardize its effectiveness and credibility (see, *among others, H. v. France* ECHR judgment of 24 October 1989).

34. However, the Court reiterates that the length of proceeding, *per se*, does not make legal remedy ineffective. The "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France ECHR judgment of 27 June 2000*).

35. The Court observes that the Applicant merely assumes that the legal remedy is ineffective. Yet, he does not substantiate sufficiently such assumption with concrete evidence. A simple claim of the Applicant about a possible length of proceedings beforehand, cannot serve as an argument to assess the effectiveness of the legal remedies available to him.

36. Consequently, the Court cannot conclude that the legal remedies available to the Applicant are not capable of providing redress, in accordance with the final results of the procedures before the regular courts.

37. The Court reiterates that the principle of subsidiarity requires that the Applicant exhaust all legal remedies provided by the law. 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 case KI 41/09 *RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, Constitutional Court, Resolution on Inadmissibility of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

38. With reference to cases KI99/14 and KI100/14, the Court reiterates its reasoning expressed in those cases that there is only one position of Chief State Prosecutor as, for example, compared to multiple positions for the appointment or reappointment of judges and prosecutors (as well as other collective public organs). In those other cases there have been multiple positions and the regular courts could remedy the Applications if a violation was proven months later. Furthermore, in the above mentioned cases, the Court was not convinced that there was sufficient time for any other Court to address that remedy before the appointment of the Chief State Prosecutor by the President of the Republic of Kosovo.

39. The Court recalls its reasoning in a number of other Applications that it has received from the judges and prosecutors who did not get appointed or reappointed. In those cases the Court has decided that the Applicants have not exhausted all effective legal remedies under Kosovo law (see *Case KI114/10, Vahide Badivuku, Constitutional Court, Resolution on Inadmissibility of 8 May 2011).*

40. Lastly, the Court considers that the KPC is a collective body and its member from the civil society is just one of the members. The contestation in the regular courts of the mandate of one its members does not inhibit the normal functioning of the KPC.

41. In summary, 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.

Furthermore, the Court emphasizes that the Applicant has already submitted a case before the Basic Court in Prishtina, which is still pending for decision on its merits.

42. Thus the Referral is inadmissible.

Request for Interim Measure

43. As stated above, the Applicant also requests the Court to render "*a decision on the imposition of an interim measure against the vacancy announcement of the KPC.*"

44. As underlined above, the Applicant has not shown a *prima facie* case on the admissibility of the referral. Therefore, the request for interim measure must be rejected as ungrounded, in accordance with Article 27 (1) of the Law and Rule 55 (4) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 14 March 2016 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 (4) of the Law;

V. TO DECLARE this Decision effective immediately

Judge Rapporteur **President of the Constitutional Court**

Bekim Sejdiu Arta Rama-Hajrizi

KI23/15, Applicant Miladin Anđelković, Constitutional Review of Decision PN no. 550/2014, of the Court of Appeal of Kosovo, of 31 October 2014.

KI23/15, Resolution on inadmissibility approved on 13 April 2016 and published on 14 June 2016.

Key words: individual referral, criminal procedure, right to fair and impartial trial, equality before law, judicial protection of rights, manifestly ill-founded referral.

The Court of Appeal of Kosovo confirmed the Decision of the Court of lower instance for termination of the criminal procedure to the third party who killed the father of the Applicant.

The Applicant claimed that the contested decisions violated his constitutional rights for equality before law, fair and impartial trial and judicial protection of rights.

The Court highlighted that Article 113.7 of the Constitution provides guarantees for the protection of individual rights and fundamental freedoms when they are violated by public authorities; while in the present case the criminal offense cannot be attributed to public authorities, i.e. they are not responsible because the Applicant's father was allegedly murdered by a third party. The Referral was declared manifestly ill-founded because the Applicant is not a subject of a violation of rights guaranteed by the Constitution.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI23/15
Applicant
Miladin Anđelković
Constitutional review of Decision PN no. 550/2014, of the Court of Appeal of Kosovo, of 31 October 2014
THE CONSITUTIONAL 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Miladin Anđelković (hereinafter, the Applicant), from Kragujevac, Republic of Serbia.

Challenged decision

2. The Applicant challenges Decision PN no. 550/2014, of the Court of Appeal of Kosovo, of 31 October 2014, in conjunction with Decision K. no. 29/14, of the Basic Court in Mitrovica, of 10 September 2014.

3. The Decision of the Court of Appeal was served on the Applicant on 14 November 2014.

Subject natter

4. The subject matter is the constitutional review of the challenged decisions, which allegedly violate Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo (hereinafter, the Constitution), in conjunction with Article 6 (Right to a fair trial), Article 13 (Right to an effective remedy) and Article 14 (Prohibition of discrimination) of the European Convention on Human Rights (hereinafter, the Convention).

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 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 27 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

7. On 12 March 2015, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan, Ivan Čukalović and Enver Hasani

8. On 27 March 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Basic Court in Mitrovica.

9. On 26 June 2015, the mandate of Judge Enver Hasani ended. On 1 July 2015, Judge Arta Rama-Hajrizi was appointed as a member of the Review Panel, replacing Judge Enver Hasani.

10. On 18 January 2016, a copy of the Referral was sent to the Court of Appeal of Kosovo.

11. On 13 April 2016, 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. Based on the documents included in the Referral, it appears that the Applicant's father was murdered by a third party, A. D., regarding a property dispute.

13. On 26 February 2014, the Public Prosecutor in Mitrovica filed an indictment against the defendant A. D. for the criminal offense of aggravated murder sanctioned by the Criminal Code of the Republic of Kosovo. The Public Prosecutor gave a detailed description of the criminal offense of the defendant A. D. thus, concluded that the indictment is justified and based on the law, because there are all essential elements of the criminal offense.

14. On 10 September 2014, the Basic Court in Mitrovica (Decision K. no. 29/14) decided that:

    "I. The defendant A. D., is incapable of standing trial.

    II. The criminal procedure against the defendant A. D., for the criminal offense of Aggravated Murder, pursuant to Article 179, paragraph 1, item 1.3 of the CCRK is terminated due to his inability to stand trial during the procedure due to his permanent psychological illness.

    III. Once the Decision becomes final, the case file shall be submitted to the Basic Court in Mitrovica – General Department – Litigations Division, with the aim of putting the defendant in a caretaking institution, pursuant to the applicable Law on Out Contentious Procedure."

15. The Basic Court reasoned that after reviewing the report of the medical experts, the statements of the prosecution and the defense, all legal requirements that the defendant A.D. is unable to stand trial have been met, and that the criminal proceedings for that case is terminated.

16. On an unspecified date, the Applicant filed with the Court of Appeal of Kosovo an appeal, alleging essential violation of the provisions of procedural law and erroneous and incomplete determination of factual situation. The Applicant mainly questioned the professionalism and authenticity of the expertise regarding the health condition of the defendant A.D.

17. On 31 October 2014, the Court of Appeal (Decision PN no. 550/2014) rejected as ungrounded the appeal of the Applicant. The Court of Appeal upheld the Decision of the Basic Court, explaining that there was sufficient evidence to prove that the defendant A.D. was unable to deal with the trial- which resulted in the termination of the criminal proceedings - and that the Applicant's allegations were of a general nature and did not contain anything specific.

18. The Court of Appeal concluded that the claims were ungrounded *"because the first instance court acted correctly when it terminated the criminal procedure against the defendant A.D., (... due to his inability to stand trial during the procedure and the permanent psychological illness"*.

19. The Court of Appeal found that"*the first instance court provided sufficient reasons pertaining to the evidence for the termination of the procedure, based on the evidence found in the case file as such as: report of expert doctors, statements of the prosecutor and the defense counsel that all the legal conditions have been met and it was confirmed that the defendant A. D. was not able to withstand trial, thus the procedure in this criminal matter was terminated"*.

Applicant's allegations

20. The Applicant claims that the challenged decisions violated his constitutional rights to equality before the law, to fair and impartial trial and to judicial protection of rights.

21. The Applicant alleges that *"the Basic Court rendered the decision on the termination of the procedure without confirming at all whether the defendant had committed the criminal offense or whether he took over someone else's responsibility"*.

22. The Applicant further alleges that *"the defendant's son attended the expert's procedure, which is against the law (Article 508) and therefore creates the suspicion of partiality"*.

23. The Applicant also alleges that *"it has not been proven who is responsible for the death of my father."*

Assessment of the admissibility of the Referral

24. 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.

25. In this respect, Article 113.7 of the Constitution 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".

26. 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".

27. The Court further takes into account Rule 36 (1) (d) and (2) (c) of the Rules of Procedure, which specifies :

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

28. The Court considers that the Applicant does not agree with decisions of the regular courts on termination of the criminal proceedings against A.D., and based on his allegations - in substance – is noticed his will to go to the end of the criminal proceedings against A. D., and he also added that *"it was not proven who is responsible for his father's murder."*

29. In addition, the Applicant questions the professional opinions of experts regarding the health condition of the defendant A. D. to follow the judicial process.

30. In this regard, the Court is obliged to first determine whether the Applicant's request for the continuation of the criminal proceedings against the third party and the discovery of the murderer of his father is a right guaranteed by the Constitution.

31. The Court observes that the Applicant has not laid blame on the public authorities of Kosovo for the death of his father; nor it has been suggested that the authorities knew or ought to have known that the life of the Applicant's father was at risk by the third parties and failed to take the appropriate measures to safeguard the Applicant's father from that risk. (See ECHR, Decision as to the Admissibility of Application no. 47916/99, *Menson and Others v. the United Kingdom*, 6 May 2003). The Applicant's case is therefore to be distinguished from cases involving the alleged use of lethal force either by agents of the State or by natural persons with their collusion (see, for example, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324; *Hugh Jordan v. the United Kingdom* no. 24746/94, judgment of 4 May 2001, ECHR 2001-III (extracts); *Shanaghan v. the United Kingdom*, no. 37715/97, Judgment of 4 May 2001, ECHR 2001-III (extracts).

32. As to the Applicant's allegation of continuation of the criminal proceedings against A. D., the Court notes that the Constitution does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence. To fall within the scope of the

Constitution, such right cannot be independently initiated, it must be indissociable from the victim's exercise of a right to bring civil proceedings, even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (See, for example, case *Gorou v. Greece* (no. 2), application no. 12686/03,[GC], Judgment of 20 March 2009, paragraph 24, see also, *mutatis mutandis,* case *Perez v. France,* application no. 47287/99, [GC], Judgment of 12 February 2004, paragraphs 70, 71).

33. Regarding the Applicant's allegation to determine the person responsible for the murder of his father, the Court notes that the public authorities acted within their legal and constitutional powers, and did not stay passive because they sued A.D. for committing a criminal offense of aggravated murder; but during the course of the criminal proceedings have concluded - after receiving the opinion of experts - that A. D. is unable to face trial.

34. The Court also refers to the general principles applied by the European Court of Human Rights in relation to investigations, which expound, first of all, that the lack of conclusions of any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate *"is not an obligation of result, but of means"* (See, for example Case no. KI98/12, Resolution on Inadmissibility of 2 July 2013, and, *mutatis mutandis,* see *Paul and Audrey Edwards V. the United Kingdom*, no. 46477/99, § 71, ECHR 2002 - II).

35. The Court considers that Article 113.7 of the Constitution provides guarantees for the protection of individual rights and fundamental freedoms when they are violated by public authorities; while in the present case the criminal offense cannot be attributed to public authorities, i.e. they are not responsible because the Applicant's father was allegedly murdered by a third party.

36. In this respect, the Court reiterates that the development of the criminal proceedings, including its conduct or dismissal, the way the perpetrators of the criminal offences are punished and discovered is a discretion and prerogative of the regular courts and of the prosecution, even though not unlimited, afforded to them by the law and the Constitution. Therefore any interference by the Court in the discretion might constitute an infringement to their autonomy (See Case no. KI98/12).

37. Therefore, the Referral is to be declared inadmissible, as manifestly ill-founded, in accordance with the Rule 36 (1) (d) and (2) (c) of the Rules of Procedure, because the Applicant is not a victim of violation of the rights guaranteed by the Constitution.

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 13 April 2016, 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**

Altay Suroy Arta Rama-Hajrizi

K110/16, Applicant Sanija Bajrami, Constitutional Review of Judgment Rev. no. 297/2014, of the Supreme Court of Kosovo, of 16 December 2014

KI10/16, Resolution on inadmissibility of 12 April 2016, published on 14 June 2016.

Key words*: individual referral, right to fair and impartial trial, manifestly ill-founded referral.*

The Applicant filed this referral on 14 January 2016, the Applicant requests the Court to correct its Resolution on Inadmissibility in Case KI64/15, and to reassess the constitutionality of Judgment Rev. No. 297/2014, of the Supreme Court of Kosovo, of 16 December 2014.

The Applicant considered that the Court rendered unfair and partial Decision. She considered that there were violations of the provisions of Article 31 of the Constitution, the rights guaranteed by Constitution.

The Constitutional Court decided to reject the Referral as ungrounded by reasoning that the Referral does not meet the admissibility requirements because the Applicant did not present precisely which rights were violated by the challenged Decision. Consequently, the Referral is manifestly ill-founded as set by Article 48 of the Law and further specified in Rule 36 (2) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
In
Case no. KI10/16
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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral KI10/16 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. In the Referral KI10/16, the Applicant requests the Court to correct its Resolution on Inadmissibility in Case KI64/15, and to reassess the constitutionality of Judgment Rev. No. 297/2014 of the Supreme Court of Kosovo of 16 December 2014, which was served on him on 20 January 2015.

Subject matter

3. The subject matter of the Referral is the correction of the Resolution on Inadmissibility in Case KI64/15 and re-assessment of the constitutionality of Judgment [Rev. no. 297/2014] of the Supreme Court of Kosovo of 16 December 2014.

Legal basis

4. Article 113, paragraph 7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 20 and 50 of Law No. 03/L-121 on Constitutional Court (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 14 January 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 February 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

7. On 24 February 2016, the Court informed the Applicant and the Supreme Court about the registration of the Referral.

Proceedings before the Court regarding the request for return to previous situation

8. On 15 October 2015, the Constitutional Court rendered a decision on Case KI64/15, where it found that the Applicant did not file the Referral within the legal time limit of four months, as provided by Article 49 of the Law and, therefore, declared the Referral inadmissible (See, Resolution on Inadmissibility of the Constitutional Court, Case KI64/15 of 15 October 2015).

9. On 14 January 2016, the Applicant filed an additional Referral with the Court, which is essentially a request to reconsider his case.

10. With the new Referral, the Applicant submitted new information, whereby he tries to prove that Referral KI64/15 was submitted to the Court within the legal deadline.

11. On 12 April 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Assessment of the request for return to previous situation

12. In order to be able to adjudicate the Applicant's request for the return of Case KI64/15 to the previous situation, the Court must first determine whether the Applicant has met the requirements provided by 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."*

13. As to the new Referral KI16/16 of 14 January 2016, the Court finds that the evidence submitted proves that Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo of 16 December 2014 was served on the Applicant on 20 January 2015, while he submitted the Referral to the Court by mail on 19 May 2015, which is in accordance with Rule 29 (Filing of Referrals and Replies) of the Rules of Procedure, which, in its paragraph 8, states that:

"(8) A referral shall be filed in person at the office of the Secretariat of the Court during regular working hours, or shall be filed by mail or by means of electronic communication."

14. Having reviewed the contents of the new Referral, the Court found that the Applicant's Referral of 20 January 2015 was submitted within the legal time limit in accordance with Article 49 of the Law.

15. Accordingly, the Court finds that the Applicant has met the requirements of Article 50 of the Law, and based on this, in the new Referral KI10/16, the Court will, therefore, assess the constitutionality of Judgment Rev. no. 297/2014 of the Supreme Court of Kosovo of 16 December 2014.

Summary of facts

16. On 12 July 2002, the Applicant filed a claim with the Municipal Court in Ferizaj against N.B, M.B, dhe M.P., by which requested the confirmation of the property rights over the house and parcel no. 1847/3, with a surface area of 3.26 are, located at Trajko Gerkoviq Street in Ferizaj.

17. In the claim, the Applicant stated that *"[...] in 1997, through the first respondent, N.B., he purchased the immovable property from the second respondent M.P. from Ferizaj, namely the house and the yard located in Ferizaj at "Trajka Gërkoviq" street which was registered as cadastral plot no. 1847/3, a total surface area of 3.26 are..."*

18. On 1 July 2008, the respondents N.B. and M.B. filed a counterclaim with the Municipal Court in Ferizaj against the claimant (the Applicant) to confirm the property rights over the same property, which they allegedly had purchased.

19. On 7 December 2009, by Judgment C. no. 276/02, the Municipal Court in Ferizaj rejected the Applicant's claim as ungrounded, reasoning that: *"Based on the evidence presented, and their assessment pursuant to Articles 7 and 8 of the LCP, this Court found that the statement of claim of the claimant [the Applicant] for confirmation of the ownership rights over the said property through the purchase from the second respondent M.P., as a seller, is ungrounded in its entirety and as such must be rejected in its entirety ... "[...] while the counterclaim of the counter-claimants N.B. and M.B., for the confirmation of the property rights over the property is grounded in its entirety... . "*

20. The Applicant filed an appeal with the Court of Appeal against Judgment C. no. 276/02 of the Municipal Court in Ferizaj of 7 December 2009 due to a substantial violation of the law and an erroneous determination of the factual situation.

21. On 2 September 2014, by Judgment Ac. no. 1961/2012, the Court of Appeal rejected the Applicant's appeal as ungrounded with the reasoning: *"... in such a created situation, the Court of Appeal held that in fact the claimant did not substantiate by any evidence the allegations filed in the statement of claim and the first instance court correctly rejected his statement of claim as ungrounded."*

22. In the conclusion of the Judgment of the Court of Appeal it is stated that: *"All allegations of the claimant, namely of his representative in the appeal, or in the supplement to the appeal, were rejected as ungrounded by the second instance court, because they were*

not supported by any concrete evidence. The appealed allegations of the counter-claimant respondent [the Applicant] that the challenged judgment contains substantial violations of the provisions of Article 182, paragraph 1, in conjunction with Articles 8 and 321 and Article 182, paragraph 2, item 1 in conjunction with Article 348 of the Law on Contested Procedure, are ungrounded."

23. Thereupon, the Applicant submitted a request for revision to the Supreme Court against Judgment Ac. no. 1961/2012 of the Court of Appeal of 2 September 2014.

24. On 16 December 2014, the Supreme Court by 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, with the reasoning: *"As regards the erroneous application of the substantive law (on which the Applicant based his request for revision), they are ungrounded, as the lower instance courts found by credible evidence that the purchaser of the subject property was the respondent N.B., not the claimant (the Applicant) Sanija Bajrami.*

Applicant's allegations

25. The Applicant considers that: "*the courts rendered unfair and partial decisions. Therefore, there was a flagrant violation of the provision of Article 31 of the Constitution.*"

26. The Applicant requests the Court *"to annul the decisions of the regular courts of Kosovo, and to render a decision by which it will remand this case to the first instance court for reconsideration."*

Admissibility of the Referral

27. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the admissibility requirements have been met, which are laid down in the Constitution and are further specified in the Law and Rules of Procedure.

28. 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."*

29. Moreover, the Court refers to 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".*

30. The Court also recalls Rule 36 (1) (d) and (2) (b) 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".

31. Having reviewed the Referral, the Court notes that the Applicant considers that the challenged judgment violated his right under Article 31 of the Constitution and Article 6 of the European Convention on Human Rights (hereinafter: ECHR), because the courts have erroneously determined the factual situation and incorrectly applied the substantive law when deciding on the merits of his statement of claim.

32. The Court notes that in determining the merits of the Applicant's appealed allegations of violation of the constitutionally guaranteed rights, it shall observe the principles established by the case law of the European Court of Human Rights (hereinafter: ECrtHR) according to which *"the fairness of the proceedings is assessed looking at the proceedings as a whole"* (ECHR, *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, series A, No. 146, paragraph 68)."

33. Accordingly, the Court analyzed the judgments of the regular courts and found that, in their judgments, they already dealt with the Applicant's appealed allegations related to the erroneous application of the provisions of the substantive law and the erroneously determined factual situation, concluded that those allegations were ungrounded.

34. In this regard, the Court notes that the judgments of the Municipal Court and of the Court of Appeal contained detailed explanations regarding the factual situation and the application of the substantive law, which were also accepted by the Supreme Court.

35. The Court further notes that the Applicant built his Referral before it solely on the allegations which have already been reasoned in the judgments of the regular courts.

36. In this regard, the Court is of the opinion that the judgments of the regular courts are based on a legally conducted procedure and on the constitutionally acceptable interpretation and application of the relevant substantive law on the factual situation as established in the court proceedings.

37. Moreover, as regards the Judgment of the Supreme Court challenged by the Applicant, the Court notes that, in that Judgment, the Applicant's claim that the lower courts had wrongly established the factual situation, was rightly rejected as inadmissible on the ground that, pursuant to Article 214.2 of the LCP, *"Revision cannot be presented due to the wrong ascertainment or incompleteness of the factual state."*

38. Therefore, the Court considers that the regular courts acted in accordance with the basic principles of the right to a fair trial under Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

39. From the above, the Court notes that the judgments of the regular courts were in accordance with the ECHR case law, according to which: *"the domestic courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case, but at the same time are obliged to give reasons for its decisions so as to*

provide clear and understandable reasons on which those decisions were based (See ECHR, *Suominen v. Finland,* Judgment of 1 July 2003).

40. In sum, the Court emphasizes that the Applicant's dissatisfaction with the outcome of his case cannot of itself raise an arguable claim of a violation of constitutional provisions. (See case: *Mezotur-Tiszazugi Tarsulat v. Hungary,* no. 5503/02, ECHR Judgment of 26 July 2005).

41. The Court considers that the Applicant has not substantiated 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 CA. no. 2129/2013, of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013, of the Court of Appeal of Kosovo, of 5 December 2013).

42. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in respect of the decisions taken by regular courts. It is the role of the regular courts to interpret and apply pertinent rules of procedural and substantive law (See, case *Garcia Ruiz v. Spain,* no. 30544/96, ECHR, Judgment of 21 January 1999; See also Case Kl70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

43. Finally, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because in his Referral he did not substantiate his claim that the challenged decision violates his rights guaranteed by the Constitution and the ECHR.

44. It follows that the Referral has to be declared inadmissible as manifestly ill-founded, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (b) 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 (2) (b) of the Rules of Procedure, on 12 April 2016, 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

KI128/15, Applicant Adem Hoti, Constitutional Review of Decision Rev. no. 127/2014, of the Supreme Court of the Republic of Kosovo, of 12 May 2014

KI128/15, Resolution on inadmissibility of 14 April 2015, published on 15 June 2016.

Key words*: individual referral, equality before law, repetitive referral*

The Applicant had previously filed a Referral with the Constitutional Court of the Republic of Kosovo whereby he had challenged the same decisions. The Court had declared the Referral inadmissible as manifestly ill-founded. (See Case KI114/14, Applicant *Adem Hoti*, Resolution on Inadmissibility, of 5 January 2015).
Among others, the Applicant alleged that the Supreme Court of the Republic of Kosovo by its Decision violated his rights guaranteed by Constitution, namely Article 24 [Equality before Law]

The Court ascertains that it had already adjudicated on Case KI114/14 and, the Applicant does not raise any new complaints in the present Referral. The Court concluded that the present Referral is repetitive of the previous Referral, KI114/14 which was adjudicated by this Court.

DECISION TO REJECT THE REFERRAL
in
Case No. KI128/15
Applicant
Adem Hoti
Constitutional review of Decision Rev. no. 127/2014, of the Supreme Court of the Republic of Kosovo, of 12 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Adem Hoti from Revuq Village, Municipality of Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision, Rev. no. 127/2014, of the Supreme Court of the Republic of Kosovo, of 12 May 2014, by which the Revision filed by the Applicant against Decision Ac. no. 3661/2013, of the Court of Appeals of Kosovo, of 28 February 2014, was rejected as inadmissible.

3. The Applicant had previously filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) whereby he had challenged the same aforementioned decisions. The Court had declared the referral inadmissible as manifestly ill-founded. (See Case KI114/14, Applicant *Adem Hoti,* Resolution on Inadmissibility, of 5 January 2015).

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law] 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 Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 32

(5) and 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 27 October 2015, the Applicant submitted the Referral to the Court.

7. On 5 November 2015, by Decision GJR. KI128/15, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur. On the same day, by Decision KSH. KI128/15, the President appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.

8. On 2 December 2015, the Court notified the Applicant of the registration of the Referral.

9. On 11 January 2016, the Applicant submitted a letter to the Court whereby he requested urgent review of his case.

10. On 12 April 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court that the Referral should be rejected.

Summary of facts

11. As regards to the allegations, raised by the Applicant, the Court has already decided on the same allegations in Case KI114/14, of 5 January 2015.

Summary of facts related to the Resolution on Inadmissibility of the Constitutional Court, in Case KI114/14, of 5 January 2015

12. On 4 July 2014, the Applicant submitted a Referral to the Court, whereby he requested constitutional review of Decision, Rev. no. 127/2014, of the Supreme Court of the Republic of Kosovo, of 12 May 2014.

13. The Applicant, in Case KI114/14, alleged that by the aforementioned Judgment, Article 24 [Equality Before the Law] of the Constitution was violated to his detriment.

14. On 8 November 2013, the Basic Court in Prishtina, Branch in Podujeva (Decision CP. no. 439/13) rejected the proposal for allowing the execution filed against Municipal Directorate of Education in Podujeva.

15. Similarly, the Court of Appeals and the Supreme Court rejected his appeal and request for revision respectively.

Applicant's allegations

16. As alleged in the previous Referral, the Applicant alleges that by the challenged decision, his right guaranteed by the Constitution, namely Article 24 [Equality Before the Law] was violated.

17. In the present Referral, the Applicant has neither submitted any new piece of evidence nor raised any new complaints.

Admissibility of Referral

18. 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.

19. The Court first refers to Article 116.1 [Legal Effect of Decisions] of the Constitution which provides:

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

20. In this regard, the Court refers to Article 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. (Amended 28 October 2014)".*

21. The Court notes that the present Referral, filed by the Applicant, is identical with his Referral KI114/14.

22. As regards his previous Referral KI114/14, the Court recalls that it had rendered a decision (Resolution on Inadmissibility in Case KI114/14), of 5 January 2015, wherein it had declared the Referral inadmissible as manifestly ill-founded. The aforementioned decision was served on the Applicant and published in compliance with Article 20.4 of the Law.

23. As mentioned above, in the present Referral, the Applicant challenges again Decision Rev. no. 127/2014, of the Supreme Court of the Republic of Kosovo, of 12 May 2014, he raises the same allegations and presents the same facts and evidence as in the previous Referral, KI114/14

24. The Court reiterates that it had already adjudicated on Case KI114/14 and, in the present Referral, the Applicant does not raise any new complaints. Thus, the present Referral is entirely repetitive of the previous Referral, KI114/14.

25. 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 KI114 /14, already decided by this Court.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 116.1 of the Constitution and Rule 32 (5) of the Rules of Procedure, on 12 April 2016, 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;

IV. This Decision is effective immediately

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Arta Rama-Hajrizi

KI04/16, Applicant "ALDEKO", limited liability Company, Constitutional Review of Judgment ARJ · UZVP. nr. 10/2015 of the Supreme Court of Kosovo of 30 July 2015

KI04/16, Resolution on inadmissibility approved on 13 April 2016 and published on 15 June 2016.

Key words: individual referral, administrative procedure, right to fair and impartial trial, equality before law, judicial protection of rights, manifestly ill-founded referral.

The Supreme Court of Kosovo had confirmed the decisions of courts of lower instances that the Applicant operated out of scope and activity foreseen by licence.

Among others, the Applicant Company alleged violation of Article 24 [Equality before Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights], of the Constitution.

Among others, the Court considers that the Applicant Company has not substantiated the allegations of a violation of fundamental human rights guaranteed by the Constitution. The facts of the case do not reveal that the regular courts acted in breach of procedural safeguards established by the Constitution. The Referral was declared inadmissible, as manifestly ill-founded.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI04/16
Applicant
"ALDEKO" Limited Liability Company
Constitutional review of Judgment ARJ·UZVP. no. 10/2015 of the Supreme Court of Kosovo of 30 July 2015
THE 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Mulet Haziraj, owner of "ALDEKO" L.L.C, from Tropojë-Pradesh of the Republic of Albania on behalf of "ALDEKO" L.L.C with residence in Gjakova (hereinafter, the Applicant Company), represented by Mr. Bajram Morina, a lawyer practicing in Gjakova.

Challenged decisions

2. The Applicant Company challenges Judgment ARJ·UZVP. no. 10/2015 of the Supreme Court of Kosovo of 30 July 2015 in connection with Judgment AA. No. 434/2014 of the Court of Appeal of Kosovo of 29 November 2014, Judgment A. No. 586/12 of the Basic Court in Prishtina and Decision K.A. No. 170/2012 of the Independent Commission for Mines and Minerals of 19 March 2012.

3. The Judgment of the Supreme Court was served upon the Applicant Company on 19 September 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, ARJ·UZVP. no. 10/2015 of the Supreme Court of Kosovo of 30 July 2015.

5. The Applicant Company alleges violation of Article 3 [Equality Before the Law], Article 7 [Values], Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

Legal basis

6. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 47 and 48 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

7. On 8 January 2016, the Applicant Company submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. On 12 February 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of judges Robert Carolan (presiding), Altay Suroy and Gresa Caka-Nimani (judges).

9. On 23 March 2016, the Court notified the representative of the Applicant Company about the registration of the Referral and asked him to provide explicit power of attorney for representation before the Court. On the same day a copy of the Referral was sent to the Supreme Court and the Independent Commission for Mines and Minerals (hereinafter, the ICMM).

10. On 14 April 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 7 April 2004, the Applicant Company filed an application with the ICMM in order to obtain a license to use lime in vicinity of Gjakova.

12. On 30 June 2005, the ICMM granted the above-stated request of the Applicant Company and furnished them with “License on Use” No. 204/MI/ICMM/05.

13. On 21 January 2009, the Applicant Company was notified by the ICMM that they were not conducting their operations in accordance with the license and were in breach of it. For those purposes they were given a deadline of 60 days in order to comply with the criteria set out in the license.

14. On 20 September 2011, the ICMM by Decision No. 5033 annulled the license of the Applicant Company due to non-compliance with the criteria set therein.

15. The Applicant Company appealed against the ICMM decision to annul their license before the ICMM following the respective procedure.

16. On 19 March 2012, the ICMM by Decision K.A. No. 170/2012 rejected the appeal of the Applicant Company and upheld its decision on annulment of the license. The ICMM reasoned, inter alia, that the Applicant Company were notified on time that they were operating out of the scope foreseen by the license, and in spite of that, they did not meet with the criteria set out in the license within a timeline of 60 days.

17. On 2 September 2014, the Applicant Company filed an appeal with the Basic Court in Prishtina against the above-stated decision of the ICMM. The Applicant Company, inter

alia, complained that they continuously complied with criteria set out in the license because the ICMM had forced them to pay the annual tax on license for the years 2010 and 2011 even though the license was annulled by the ICMM on 20 September 2011.

18. On 22 September 2014, the Basic Court in Prishtina by Judgment A. No. 586/12 rejected the statement of claim of the Applicant Company against the ICMM decision as unfounded. The Basic Court reasoned that: (i) the ICMM had annulled the license of the Applicant Company in accordance with the applicable law in Kosovo, (ii) that the Applicant Company were notified in due time and were given a timeline of 60 days in order to meet the criteria set out in the license, and that (iii), the license was annulled because the Applicant Company did not meet the criteria set out therein even after being notified by the ICMM. The Basic Court also added that from the facts of the case it results that the law was not applied to the detriment of the Applicant Company, and that, the ICMM had submitted sufficient evidence confirming the legal obligation of the Applicant Company to meet the criteria set out in the license.

19. On 20 October 2014, the Applicant Company filed an appeal with the Court of Appeal of Kosovo against the judgment of the Basic Court alleging essential violation of the procedural law and erroneous application of the substantive law. The Applicant Company, inter alia, complained against the findings of the Basic Court as to the legality of the decision of ICMM, and that, the Applicant Company did not act in accordance with the criteria set out in the license. The gist of the Applicant Company's complaints was that the Basic Court did not take into account the fact that the scope of the license was broadened with the consent of competent local authorities and the KFA.

20. On 29 November 2014, the Court of Appeal of Kosovo by Judgment AA. No. 434/2014 rejected the appeal of the Applicant Company as unfounded and upheld the judgment of the Basic Court. The Court of Appeal confirmed the impugned judgment of the Basic Court and reiterated that: (i) it is verified that the Applicant Company were operating outside of the scope set out in the license (ii), that the Applicant Company did not respond to the ICMM warnings with regards to non-compliance with the criteria set out in the license and (iii) that the ICMM had acted in accordance with the applicable law in Kosovo.

21. With regard to the allegation of the Applicant Company about the broadening of the license by competent authorities, the relevant part of the judgment of the Court of Appeal reads:

> *"The consent from the municipality and the KFA, which the claimant invokes are related to the change of plots in the field and the claimant's application for another license and do not apply to the license which envisaged the operating borders, whereas for operating in a different area it is required to have a valid license because the operating borders are set as envisaged by Article 33 of the Regulation on Mines and Minerals. Therefore the administrative authority ICMM after finding the complete factual situation and confirming the perpetrated action pursuant to the legal provisions specified in the Ruling challenged by the claim annulled the license of this entity".*

22. The Applicant Company filed with the Supreme Court a request for extraordinary review of the judgments of the Court of Appeal and the Basic Court. The Applicant Company mainly alleged that: (i) both the Basic Court and the Court of Appeal had overlooked the

non-contentious fact that the ICMM decision to annul the license was rendered after 3 years from the day it notified the Applicant Company about the possibility to annul the license, (ii) both the Basic Court and the Court of Appeal had overlooked the fact that the Applicant Company had taken all the necessary measures to broaden the scope of the license with the consent of the competent authorities and (iii) the fact that the ICMM had obliged the Applicant Company to pay the annual tax during years 2010 and 2011 shows that the they had operated within the scope of the license.

23. On 30 July 2015, the Supreme Court by Judgment ARJ-UZVP No. 10/2015 rejected the Applicant Company's request for extraordinary review of the judgments of the lower instances. The Supreme Court adopted the findings of the courts of lower instances namely that the Applicant Company was operating outside the scope of the license and that the courts of the lower instances correctly applied provisions of procedural and substantive law.

24. The relevant part of the judgment of the Supreme Court read:

> *"Article 9 of the Law on Mines and Minerals of Kosovo (no. 03/L-163) and Article 8 of Regulation no.2005/3 on Mines and Minerals specify that if a Licensee or Permit Holder fails to maintain its eligibility or to otherwise comply with a material requirement of the Present Law or any License, Permit, agreement or other instrument issued and/or executed pursuant to the Present Law, the ICMM shall provide such Licensee or Permit Holder with a written "Notice of Failure to Comply" and the instruction to correct the concerned failure. If the failure continues after the time period specified in the "Notice of Failure to Comply", the Commission may suspend or annul the license of permit of the concerned person.*
>
> *This court also finds that on 19.01.2011 the respondent sent to the claimant the notice of failure to comply with the terms of license no.024/MI/ICMM/05. Since the noncompliance continued after the time period specified in the 'Notification' the ICMM with its Ruling no.5033 of 20.09.2011 annulled "Aldeko's" license of 04.08.2005, and due to the latter's failure to comply with the given remarks the Commission's Ruling K.A. no.170/2012 of 19.03.2012 rejected the claimant's complaint and the first instance Ruling was left in power".*

Applicant's allegations

25. The Applicant alleges violation of Article 3 [Equality Before the Law], Article 7 [Values], Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution.

26. As to the judgments of the Basic Court and the Court of Appeal, the Applicant alleges that: "*Basic Court in Prishtina – Department for Administrative Affairs, in its capacity of first instance court upon rendering Judgment A.No.586/12 of 22.09.2014, and the Court of Appeals of Kosovo – Department for Administrative Affairs upon rendering Judgment A.A.No.434/2014 of 29.12.2014, both failed to correctly assess the legality of the challenged decision No.170/2012 of 19.03.2012 of the ICMM (rendered almost 3 years after the notice on License suspension)".*

27. As to the judgment of the Supreme Court, the Applicant alleges that: "*the Supreme Court of Kosovo with its Judgment ARJ-UZVP.No.10/2015 of 30.07.2015, did not render a*

merited decision and described in the reasoning of its Judgment the erroneous and unsustainable conclusions of both the first and second instance courts pertaining to the Applicant's legal matter. Due to the generalized reasons in its Judgment this court rejected as not grounded the Applicant's Request of 04.03.2015 for the extraordinary review of Judgment A.A.No.434/2014 of 29.12.2014 of the Court of Appeals of Kosovo – Department for Administrative Affairs".

Assessment of admissibility

28. The Court first will examine 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. Article 21.4 of the Constitution [General Principles] establishes:

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

31. 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".*

32. The Court further takes into account Rule 36 2 (d) of the Rules of Procedure which foresee:

> *(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.*

33. The Court notes that the regular courts replied to the questions related to the Applicant Company's case as they explained that: (i) the ICMM decision to annul the license was grounded on the law applicable in Kosovo , (ii) that the ICMM had notified the Applicant Company in due time that they were operating out of the scope laid out in the license – and for that purpose – they were given a deadline of 60 days, and that (iii) the license was annulled because the Applicant Company did not comply with the criteria set out therein even after being notified by the ICMM.

34. The Court also draws attention to the Applicant Company's allegation that the regular courts had overlooked, and thus did not address, the fact that the scope of the license was

broadened with the consent of competent authorities implying that they were conducting operations within the scope of the license.

35. Furthermore, the Court considers that that particular allegation does not correspond and is contradictory to the evidence contained in the referral. In that respect the Court of Appeal had found that the consent given to the Applicant Company by the competent authorities was related to the request for another license and did not concern the license under review by the ICMM and subsequently the basic court.

36. As to the Applicant Company's allegation that the ICMM had annulled the license three years following the first official notice, the Court considers that such allegations – for the purposes of constitutional procedure – are irrelevant because they are a matter of fact and are not allegations raised on the constitutional level.

37. Moreover, the Court considers that the Applicant Company only quotes provisions of the Constitution without substantiating how those constitutional norms were violated to their detriment as is required by Article 48 of the Law.

38. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts 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).

39. 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).

40. 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. The role of the Constitutional Court is 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).

41. In these circumstances, the Court considers that the Applicant Company has not substantiated the allegations of a violation of fundamental human rights guaranteed by the Constitution. The facts of the case do not reveal that the regular courts acted in breach of procedural safeguards established by the Constitution.

42. Consequently, the Referral, on constitutional grounds, is manifestly ill-founded and must be declared inadmissible as established by Articles 113.7 and 21.4 of the Constitution, provided for by Article 48 of the Law and as further specified by 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 April 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY the Parties of this Decision;

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

IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Snezhana Botusharova	Arta Rama – Hajrizi

KI88/15, Applicant Božidar Dimić, Request for Constitutional Review of Judgment AC-I-15-0018, of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 19 March 2015.

KI88/15, Resolution on inadmissibility of 13 April 2016, published on 20 June 2016.

Key words: individual referral, right to compensation of the damage, right to fair and impartial trial, right to work and exercise profession, manifestly ill-founded.

By Decision AC-I-15-0018, of 19 March 2015, the Appellate Panel of the Special Chamber of Supreme Court rejected the appeal of the Applicant for benefit from the privatized enterprise by the Kosovo Privatization Agency.

The Applicant alleged that this Decision violates his rights and freedoms 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 102 [General Principles of the Judicial System] of the Constitution of Kosovo, as well as Article 6 and Article 1 of Protocol 1 of the European Convention on Human Rights.

The Court ascertained that the Applicant only mentioned the constitutional provisions without substantiating them on concrete facts or evidence. Based on this, the filed Referral does not meet the admissibility requirements because the Applicant has not demonstrated in his Referral that the challenged decision violates his rights guaranteed by the Constitution and the ECHR. Therefore, the Referral is manifestly ill-founded and is declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

RESOLUTION ON INADMISSIBILITY
in
Case no. KI88/15
Applicant
Božidar Dimić
Request for constitutional review of
Judgment AC-I-15-0018 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 19 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
Bekim Sejdiu, Judge
Selvete Gerxhaliu, Judge
Gresa Caka Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Božidar Dimić, residing in Kraljevo, Republic of Serbia (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Judgment AC-I-15-0018 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter, the Appellate Panel), of 19 March 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which allegedly violated the Applicant's rights and freedoms 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 102 [General Principles of the Judicial System] of the Constitution of Kosovo (hereinafter, the Constitution), as well as Article 6 and 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, Article 47 of the Law on the Constitutional Court of Republic of Kosovo no. 03/L-121 (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 28 June 2015, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 3 August 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.

7. On 15 February 2016, the Court notified the Applicant of the registration of the Referral and sent a copy of it to the Appellate Panel.

8. On 13 April 2016, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant was an employee of the Socially-Owned Enterprise "Auto Moto Start" (hereinafter, AMS) until 1999.

10. On 31 December 2010, Kosovo Privatization Agency (hereinafter, the KPA) commenced the process of privatization of AMS.

11. On 2 March 2011, the Applicant filed with the KPA a request for compensation and severance payment.

12. On 17 April 2013, the KPA [Decision no. 0060] rejected the Applicant's request as invalid because "*The claimant did not submit sufficient evidence to confirm that he was actively employed at the SOE "AUTO-MOTO START" (in liquidation) pursuant to Article 40.1.6.2 of the Annex of Law No. 04/L-034 on PAK that provides that claimants are entitled to severance payment if "they have become surplus to requirements due to or in relation to the actions undertaken by the Agency [KPA] pursuant to Article 6.1 or 6.2 of the Law on PAK*

13. The KPA further concluded that *"the claimant did not become surplus to requirements as a consequence of the Ruling on Liquidation in 2011, nor is he allegedly surplus to requirements in relation to the action undertaken by the Agency [...] In fact at the time the claimant stopped working for the SOE neither PAK nor its predecessor Kosovo Trust Agency had been established ye."*.

14. On 18 April 2013, the Applicant filed an appeal with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter, the Specialized Panel) against the Decision [no. 0060] of the KPA.

15. The Applicant maintained in his appeal that *"he is entitled to all rights from the employment relationship and consequently to the right of compensation and severance payment"*.

16. On 4 April 2014, the KPA submitted a reply to the Specialized Panel, stating, *inter alia*, that *"appellant's employment relationship was not ended as a result of any action from the KPA. The appellant did not submit any evidence confirming that he was employed after 1999, or that he received any personal income from the SOE; consequently, the appellant was not an employee of the SOE at the time of privatization and the KPA did not terminate his employment relationship*"

17. On 18 December 2014, the Specialized Panel [Judgment C-IV-13-0701] rejected as ungrounded the Applicant's appeal.

18. The Specialized Panel considered that *"the appellant's claims that he was employed at the SOE until the privatization period and when the KPA terminated his employment relationship are not grounded. The appeal does not provide any evidence that confirms that the appellant was employed at the SOE or that he was on the pay-roll of the SOE at the time of privatization or when the KPA terminated his employment relationship with a notification or Ruling."*

19. On 16 January 2015, the Applicant filed an appeal with the Appellate Panel due to erroneous determination of the factual situation, erroneous application of the substantive law and due to failure to consider the specificities of the Applicant's situation, which led to his discrimination.

20. On 19 March 2015, the Appellate Panel [Judgment AC-I-0018] rejected as ungrounded the Applicant's appeal, *"because the appellant did not submit any evidence pertaining to these claims*".

Applicant's allegations

21. The Court recalls that the Applicant claims that *"the decisions and the Judgments rendered in this case are extremely tendentious, biased in one part and discriminatory"*

22. The Applicant alleges that the decisions and the Judgments *"in their essence seriously violate the Constitution and the laws, because they are unfair and as such should not exist and produce legal effects."*

23. The Applicant requests the Court *"to annul the Judgment of the Appellate Panel and the Specialized Panel, to approve the Applicant's claim and to remand the case to the court for reconsideration"*.

Admissibility of the Referral

24. The Court first examines whether the Referral meets the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

25. In this respect, the Court refers to Article 113 (7) of the Constitution, which 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."*

26. 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".

27. The Court also refers to Rule 36 (1) d) and (2) b) of the Rules of Procedure which foresees:

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

(12) 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 also recalls that the Applicant alleges that his rights guaranteed by the Constitution and ECHR were violated as a consequence of the early termination of the employment by the KPA and due to the rejection of compensation and severance payment.

29. The Court notes that the regular courts dealt with Applicant's previous or current employment status and the grounds of his request for compensation and severance payment and they provided a reasoned assessment of the grounds of the Applicant's allegations.

30. In that respect, the Court considers that the regular courts have complied with the fundamental principles of the right to a fair trial under Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

31. That consideration is in conformity with the jurisprudence of the European Court of Human Rights (ECtHR), which held that "*court[s] have a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions (*ECtHR*, Suominen v. Finland* no. 37801, Judgment of 1 July 2003)".

32. The Court further considers that the regular courts have also addressed the Applicant's allegations that he was a victim of discrimination. In that context, the Appellate Panel in its Judgment [AC-I-0018] concluded that the Applicant could have made his appeal on the basis of discrimination pursuant to Article 10.4 of UNMIK Regulation 2003/13 which, *inter alia,* provides that, "[...] *an employee who does not meet these requirements shall be entitled to 20 % share if it is determined that his/her disqualification was a consequence of discrimination".*

33. Nevertheless, the Court notes that the Applicant did not raise before the KPA and the competent courts the question of inclusion in the final list of employees eligible to the 20 % share of proceeds from the privatization.

34. The Court notes that the Applicant claimed in general that the courts have not taken into consideration the specificities of his case, namely that he was not treated equally.

However, the Court considers that a general claim of the Applicant on unequal treatment is not sufficient without indicating any concrete ground of such inequality. Therefore, the Court concludes that the reference by the Applicant to a violation of rights under Article 24 of the Constitution is ungrounded.

35. The Court refers to the case-law of the ECtHR which held that *"discrimination [...] is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*". (See Judgment *Willis v. United Kingdom,* no. 36042/97, para. 48, ECHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, para. 63., Judgment *D.H. and others v. Czech Republic*, para. 44).

36. The Court finds that the alleged violation of the rights under Article 1 of Protocol 1 of ECHR is ungrounded, as the Applicant has not succeeded to realize his claim of *"legitimate expectations"* with respect to his claim for compensation and severance payment cannot of itself present a valid ground justifying the allegations of a violation.

37. The Court considers that Article 1 of Protocol 1 only protects existing property and not the right to acquire property in the future. According to that viewpoint, the legitimate expectation of any "property", "assets" or "compensation of damage", must be based on a legal provision or a legal act having a valid legal basis and affecting the property rights. (See Case *Peter Gratzinger and Eva Gratzingerova v. Czech Republic,* European Court of Human Rights Decision of 10 July 2002, no. 39794/98, para. 69).

38. Nonetheless, the Court finds that the challenged judgments were rendered by courts established by the Constitution and law, pursuant to the principle of Article 102 (General Principles of the Judicial System) of the Constitution, which the Applicant cited as a violation. The courts, within the limits of their competences, have conducted the proceedings based on the law, thereby giving constitutionally-accepted reasons for such proceedings.

39. The Court emphasizes that the Applicant's disagreement with the outcome of his case cannot of itself raise an arguable claim of a violation of constitutional provisions. (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary, no.* 5503/02, ECHR Judgment of 26 July 2005).

40. The Court considers that the Applicant has not substantiated 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 CA. no. 2129/2013 of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013 of the Court of Appeal of Kosovo, of 5 December 2013 1947/2013, of 5 December 2013).

41. The Court further reiterates that it is not its duty 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 v. Spain*, No. 30544/96, ECHR Judgment of 21 January 1999; see also case KI70/11 Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court Resolution on Inadmissibility of 16 December 2011).

42. In conclusion, the Court finds that the Applicant's Referral does not meet the admissibility requirements because the Applicant has not demonstrated in his Referral that the challenged decision violates his rights guaranteed by the Constitution and the ECHR.

43. Therefore, the Referral is manifestly ill-founded on a constitutional basis and is inadmissible, in accordance with Rule 36 (1) (d) and 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 Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, on 13 April 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY the Parties of this Decision;

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

V. TO DECLARE this Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Almiro Rodrigues	Arta Rama-Hajrizi

KI38/16, Applicant: Nezir Kryeziu, Constitutional review of Judgment Pml. no. 148/2015, of the Supreme Court of Kosovo, of 9 November 2015

KI38/16, resolution on inadmissibility of 18 May 2016, published on 21 June 2016

Key words: *individual referral, request for interim measure, right to fair and impartial trial, manifestly ill-founded.*

On 19 November 2015, the Supreme Court (Judgment Pml. no. 148/2015) rejected as ungrounded the request for protection of legality of the Applicant and upheld Judgment (P. no. 130/2014) of the Basic Court, whereby the Applicant was found guilty and imposed on an aggregate punishment of the imprisonment of 9 (nine) years and 10 (ten) months for the criminal offence of murder in exceeding the limits of necessary defense, and for the criminal offence of attempted murder which resulted in light bodily harm.
The Applicant alleged that his right to a fair and impartial trial was violated and he also requested imposition of interim measures.

The Court considered that all of the Applicant's arguments, which were relevant to the resolution of the criminal case, were duly heard and that they were duly examined by the courts, that the material and legal reasons for the decision he challenges were presented in detail and, subsequently, the proceedings before the regular courts, viewed in their entirety, were fair. The referral was declared inadmissible as manifestly ill-founded. Additionally, the Court rejected the request for interim measure, because the Applicant has not shown a *prima facie* case on the admissibility of the referral.

RESOLUTION ON INADMISSIBILITY
in
Case No. KI38/16
Applicant
Nezir Kryeziu
Constitutional review of Judgment Pml. no. 148/2015, of the Supreme Court of Kosovo, of 9 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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Nezir Kryeziu from Suhareka (hereinafter: the Applicant), who is represented by Mr Ethem Rogova, lawyer from Prizren.

Challenged decision

2. The Applicant challenges Judgment Pml. no. 148/2015, of the Supreme Court of Kosovo, of 9 November 2015.

Subject matter

3. The subject matter is the constitutional review of the abovementioned challenged Judgment, which allegedly violated Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

4. The Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose interim measure *"and to suspend the detention on remand against the convict – Nezir Kryeziu until the final decision of this Court"*.

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 29 and 54 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 22 February 2016, the Applicant submitted the Referral to the Court.

7. On 14 March 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Ivan Čukalović.

8. On 25 March 2016, the Court informed the Applicant and the Supreme Court of Kosovo about the registration of the Referral.

9. On 18 May 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to declare the Referral inadmissible.

Summary of facts

10. On 26 October 2011, the Prosecutor in Prizren filed an indictment (PP. no. 28/2011) against the Applicant for the following three criminal offences: the criminal offence of murder; the criminal offence of attempted murder which results in light bodily harm, in conjunction, and the criminal offense of unauthorized ownership, control, possession or use of weapons.

11. On 4 November 2013, the Basic Court in Prizren. by Judgment P. no. 251/11 found the Applicant guilty and imposed an aggregate punishment of the imprisonment of 11 (eleven) years for the criminal offences criminal offence of murder in exceeding the limits of necessary defense, and criminal offense of attempted murder that resulted in light bodily harm.

12. By the same Judgment, the Basic Court in Prizren rejected the indictment for the criminal offence of unauthorized ownership, control, possession or use of weapons, because this criminal offense is covered by the law on amnesty.

13. The Applicant filed appeal with the Court of Appeal against the Judgment (P. no. 251/11) of the Basic Court.

14. On 23 April 2014, the Court of Appeal (Decision PAKR. No. 163/2014) annulled Judgment (P. no. 251/11 of 4 November 2013) of the Basic Court in Prizren, and remanded the case to the first instance court for retrial, reasoning that:

    "*The enacting clause of the judgment is incomprehensible and ambiguous, does not coincide with the reasoning and the decisive facts, presented by the first instance*".

15. On 24 October 2014, in the repeated procedure the Basic Court (Judgment P. no.130/2014) found the Applicant guilty and imposed an aggregate punishment of the imprisonment of 9 (nine) years and 10 (ten) months for the criminal offence of murder in exceeding the limits of necessary defense, and for the criminal offence of attempted murder which resulted in light bodily harm.

16. The Basic Prosecutor in Prizren filed an appeal with the Court of Appeal due to essential violations of the Criminal Procedure Code (hereinafter: CPC) and erroneous determination of the factual situation.

17. The Applicant's defense counsels filed appeals with the Court of Appeal against the Judgment (P. no. 130/2014) of the Basic Court on the grounds of essential violations of CPCK and erroneous determination of the factual situation.

18. On 22 December 2014, the Appellate Prosecutor (submission PPA/I no. 604/14) proposed that the appeal of the Basic Prosecutor be approved and the appeals of the Applicant's defense counsels be rejected as ungrounded.

19. On 17 March 2015, the Court of Appeal (Judgment P. no. 130/2014) rejected as ungrounded the appeal of the Basic Prosecutor and rejected as ungrounded the appeals of the Applicant's defence counsels, upheld the Judgment (P. no. 130/2014) of the Basic Court, regarding the length of the imprisonment sentence and legal qualification of the criminal offence of murder in exceeding the limits of necessary defence.

20. At the same time, the Court of Appeal – SCD modified *ex-officio* the Judgment (P. no. 130/2014) of the Basic Court, only in the part pertinent to the legal qualification of the criminal offence under item II, thus the criminal offence of attempted murder resulting in light bodily harm, is re-qualified as criminal offence of attempted murder.

21. The Applicant's defense counsels submitted to the Supreme Court of Kosovo a request for protection of legality against the Judgment (P. no. 130/2014) of the Basic Court and the Judgment (PAKR. no. 619/2014) of the Court of Appeal due to essential violations of the CPCK.

22. On 16 July 2015, the State Prosecutor by submission (KMLP. II. no. 112/2015) proposed that the request for protection of legality be rejected as ungrounded.

23. On 19 November 2015, the Supreme Court (Judgment Pml. no. 148/2015) rejected as ungrounded the request for protection of legality of the Applicant, and gave detailed explanation of each Applicant's allegations.

Applicant's allegations

24. The Applicant alleges that the challenged Judgment violated his right guaranteed by Articles 31 of the Constitution and Article 6 of ECHR.

25. The Applicant alleges that by indictment (PP. no. 28/2011) he was accused of criminal offence of murder, and that by Judgment (P. no. 251/2011) of the Basic Court in Prizren he was found guilty for the commission of the criminal offence of murder in exceeding the limits of necessary defense.

26. The Applicant alleges that because the prosecution did not re-qualified the indictment, he could not declare on the guilty because if it was read to him"*...the modified indictment regarding the criminal offence of*" murder in exceeding the limits of necessary defense, *the accused Nezir would admit the commission of criminal offence and by this, the imposed sentence based on the guilty plea would be lower.*"

27. The Applicant mentions that the alleged violations constitute "*...absolute violations of Article 386, paragraph 1 of the PCPCK, a provision determining that the judgment may*

relate only to the accused and only to an act which is the subject of a charge contained in the indictment as initially filed or as modified or extended in the main trial.“

28. The Applicant further emphasizes that he emphasized the issue of re-qualification of the indictment also in the appeal procedure before the regular courts.

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

> *“To hold that there has been a violation of Article 31, paragraph 1 of the Constitution of the Republic of Kosovo as read in conjunction with Article 6 of the European Convention on Human Rights.”*

30. The Applicant requests the Court to impose interim measure *“and to suspend the detention on remand against the convict – Nezir Kryeziu until the final decision of this Court“*.

Admissibility of the Referral

31. The Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

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

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

33. The Court also refers to 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 public authority is subject to challenge”.*

34. Furthermore, the Court takes into consideration Rule 36 (1) d) and (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 declare a referral as being manifestly ill-founded when it is satisfied that:*
> *[…]*
> *(d) the Applicant does not sufficiently substantiate his claim;”*

35. The Applicant essentially alleges that the regular courts have accepted to consider the unchanged indictment, and by this they committed absolute violation of Article 386 paragraph 1 of the PCPCK, and that due to such erroneous interpretation of the law there has been a violation of Article 31 of the Constitution and of Article 6 of the ECHR.

36. 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."*

37. In addition , the Court takes into account Article 6 (1) of ECHR, which states:

> *"1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. "*

38. As well as Article 386 of PCPCK on which the Applicant refers and which provides:

> *"(1) The judgment may relate only to the accused and only to an act which is the subject of a charge contained in the indictment as initially filed or as modified or extended in the main trial.*
> *(2) The court shall not be bound by the motions of the prosecutor.regarding the legal classification of the act.*
> *(3) The court shall not be bound by any agreement between the public prosecutor and the defence regarding modification of the charges or the guilty plea."*

39. The Court notes that the Applicant presented these allegations also in the proceedings upon the appeal before the Court of Appeal and in the request for protection of legality before the Supreme Court, which gave detailed response to these Applicant's allegations.

40. The Court of Appeal (Judgment PAKR. no. 619/2014) reviewed these Applicant's allegations and concluded that:

> *"Having analyzed the case file this court considers that in the present case we have violation of the criminal code in favour of the defendant, due to which we set from the principle reformatio in peius, therefore, and for this reason the latter cannot be modified, but it can only be concluded"*

41. The Supreme Court (Judgment Pml. no. 148/2015) reviewed these Applicant's allegations:

> *"... The allegation of the defense counsel – E. R. that the first instance court should have initiated the court review session, not with the initial indictment of the state prosecutor as regards the legal qualification stands, due to the reason that the criminal offence of murder was re-qualified to a murder by exceeding the limits of necessary defense and this re-qualification was not challenged by the state prosecutor, whereas the case was remanded for retrial by an appeal of the defense counsels of the accused person, however this violation did not influence the legality of the decision and the principle "reformatio in peius" was not violated".*

42. The Supreme Court reasoned in detail why it considers that the violation did not have influence on the legality of the decision:

> *"... First of all, the accused person was favored by the Prosecutor, because even though in such circumstances the question was about the criminal offence of Attempted Aggravated Murder provided by Article 147, item 11, as read in conjunction with Article 20 of CCK, his actions have been qualified as an ordinary murder and attempted murder, provided by Article 146 of CCK."*

43. Furthermore, the Supreme Court states the following:

> *"...the conclusion of the first instance court for exceeding the limits of necessary defense by the accused is very disputable", since one cannot be the actor of an attack and at the same time exceed the limits of necessary defense. The limits of necessary defense may be exceeded by the person attacked (person defending himself or herself from an attack), not by the attacker as the first instance court has concluded, however this defect created by the first instance court cannot be cited in any manner, as it would violate the principle 'reformatio in peius".*

44. Finally, the Supreme Court reasoned that the flaws referred by the Applicant made the first instance court to re-qualify the serious criminal offence in the lesser criminal offence, concluding as it follows:

> *"....that the (Basic Court in Prizren) by an unclear conclusion in the enacting clause, which is in contradiction with the institute of the necessary defense when in it, the accused person is considered also as the attacker and that he has exceeded the limits of necessary defense; however this erroneous and illogical conclusion may be, it has favored him* (the Applicant)*, due to the reason that in accordance with this conclusion, the first instance court has re-qualified the Murder as a Murder in exceeding the necessary defense".*

45. The Court notes that the regular courts took into account the objections submitted by the Applicant; this is supported by the fact that based on his appeal Judgment (P. no. 251/11) of the Basic Court in Prizren - SCD was annulled and in the repeated proceedings he was imposed a lower sentence.

46. The Applicant referred also on:"*...absolute violation of Article 386, paragraph 1 of the PCPCK, whose provision provides that the judgment may relate only to the accused and only to an act which is the subject of a charge contained in the indictment as initially filed or as modified or extended in the main trial."*

47. The Court notes that this Article in paragraph 2 provides that "*the Court shall not be bound by the motions of the prosecutor regarding the legal qualification of the act."*

48. From the above, it follows that the Applicant was given an opportunity that in various stages of the proceedings before the regular courts presents arguments and evidence that he considers relevant to his case. At the same time, he had the opportunity to effectively challenge the arguments and evidence presented by the responding party and to challenge the interpretation of the law before the Municipal Court, the Court of Appeal and the Supreme Court in regular court proceedings.

49. The Court reiterates that under the Constitution, it is not its duty to act as a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of the regular court to interpret and apply the pertinent rules of both procedural and substantive law

(See, case *Perlala v. Greece*, no. 17721/04 paragraph 25. ECHR, Judgment of 22 February 2007).

50. Although the Applicant claims that his rights have been violated by erroneous determination of facts and erroneous application of the procedural and substantive law by regular courts, the Applicant did not substantiate his allegation that the abovementioned decisions violated his constitutional rights under Article 31 of the Constitution and Article 6 of the ECHR.

51. The Court reiterates that it is not its task to deal with errors of fact or applicable law, allegedly committed by 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). The Applicant must submit a reasonable claim and compelling argument when he argues that the public authority violated his/her rights and freedoms protected by the Constitution.

52. In fact, the Court emphasizes that its role is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken, or whether in any way the proceedings were unfair or arbitrary (see *mutatis mutandis Shub vs. Lithuania*, paragraph 16, ECtHR Decision on admissibility of the Referral of 30 June 2009; *Edwards v. United Kingdom*, paragraph 34, ECtHR Judgment of 16 December 1992; *Barbera Messegue Jabardo v. Spain*, paragraph 68, ECtHR Judgment of 6 December 1998).

53. The Court considers that all the arguments of the Applicant that were relevant to the criminal case, were duly heard and duly examined by the courts, that the material and legal reasons for the decision he challenges were presented in detail and, subsequently, the proceedings before the regular courts, viewed in their entirety, were fair.

54. In summary, the Court finds that the admissibility requirements have not been met. The Applicant failed to present and substantiate the allegations that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECtHR.

55. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with the Rules 36 (2) d) of the Rules of Procedure.

Request for Interim Measure

56. As mentioned above, the Applicant also requests the Court to impose interim measure *"...and to suspend the detention on remand against the convict – Nezir Kryeziu until the final decision of this Court"*.

57. In order that the Court grants the Interim Measure, in accordance with Rule 55 (4 and 5) of the Rule of Procedure, it is necessary that:

> *"Rule 55 (4) (a) the party requesting interim measures has shown [...] prima facie case on the admissibility of the referral;*
>
> *[...]*

> *Rule 55 (5) If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application. "*

58. As stated above, the Applicant's Referral is inadmissible, because the presented facts do not in any way justify the allegation of a violation of the constitutional rights. The Applicant has not shown a *prima facie* case on the admissibility of the referral. Therefore, the request for interim measure is to 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) (d) and 55 (5) of the Rules of Procedure, on 18 May 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY this Decision to the Parties;

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

V. TO DECLARE this Decision effective immediately;

Judge Rapporteur	**President of the Constitutional Court**
Bekim Sejdiu	Arta Rama-Hajrizi

KI155/15 and KI157/15, Applicant: Snežana Zdravković and Miloratka Nikolić, Constitutional review of Judgment AC-I-14-0311- A0001-A0023, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 15 July 2015 KI155/15 and KI157/15, decision to dismiss the Referral, of 17 May 2016, published on 28 June 2016

Key words: *individual referral, joinder of the cases, moot referral*

The Applicants allege that Judgment AC-I-14-0311-A0001-A0023 of the Appellate Panel did not decide on the subject of dispute, and consequently, their legal status remained pending in relation to the right to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the SOE "Urata-*Voćar*".
The Applicants addressed himself to the Constitutional Court with a request to correct the "*technical error in typing or dictation of the text of the judgment*" and the Applicants "*to be included on the final list of eligible workers who are entitled to 20% share of the proceeds from the privatization of the SOE "Voćar.*"

The Court considered that the Applicants' referrals are moot, given that the respective supplemental Judgments (AC-I-14-0311-A1 and AC-I-14-0311-A001) of the Appellate Panel decided on the legal status of the Applicants, and PAK was ordered to include both Applicants in the final list of eligible employees who were entitled to 20% of share of the proceeds from the privatization of the SOE "Urata-*Voćar*".
The Court finds that the subject matter of the Referrals does no longer present a case or controversy before the Court and that the Referrals are to be dismissed, because what was at stake for the Applicants was decided in their favor.

DECISION TO DISMISS THE REFERRAL
in
Cases Nos. KI155/15 and KI157/15
Applicants
Snežana Zdravković and Miloratka Nikolić
Constitutional review of Judgment AC-I-14-0311- A0001-A0023,
of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters,
of 15 July 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
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicants

1. Referral No. KI155/15 was submitted by Mrs. Snežana Zdravković and referral No. KI157/15 was submitted by Mrs. Miloratka Nikolić, both from Gračanica (hereinafter: the Applicants).

Challenged decision

2. The Applicants challenge Judgment AC-I-14-0311- A0001-A0023 of 15 July 2015 of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) .

Subject matter

3. The subject matter is the request for constitutional review of the challenged Judgment. The Applicants allege that the Judgement did not decide on the subject of the dispute, therefore the legal status of the Applicants remained unresolved in relation to their right to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the Social Enterprise „Urata-Voćar“ in Prishtina (hereinafter: SOE "Urata-Voćar").

4. The Applicants do not mention any specific article of the Constitution that were violated, but consider that *there was “a technical error in typing or dictation of the text of the judgment as their names were omitted from the list.“*

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 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 24 December 2015, Applicant Snežana Zdravković submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which was registered under number KI155/15.

7. On 28 December 2015, Applicant Miloratka Nikolić submitted the Referral to the Court, which was registered under number KI157/15.

8. On 22 January 2016, the President of the Court by Decision GJR. KI155/15 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH. KI155/15, the President appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

9. On 19 February 2016, the Court informed Applicant Snežana Zdravković and the Supreme Court of the Republic of Kosovo (hereafter: the Supreme Court) about the registration of her Referral, and sent a copy of the Referral to the Supreme Court.

10. On 23 February 2015, the Court informed the Privatization Agency of Kosovo (hereinafter: PAK) about the registration of Referral No KI155/15 and requested from it information whether the Applicant, Snežana Zdravković, was included on the list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE „Urata-Voćar“.

11. On 1 March 2016, PAK responded to the request of the Court stating that the legal status of Applicant Snežana Zdravković has not been determined and that PAK requested the Appellate Panel to render a supplemental judgment, which to decide on the legal status of this Applicant.

12. On 7 March 2016, in accordance with Rule 37.1 of the Rules of Procedure the President of the Court ordered the joinder of Referral KI157/15 to Referral KI155/15. According to the order the Judge Rapporteur and the composition of the Review Panel in both cases (KI155 15 and KI157/15) remained the same, as decided by Decision no. KSH. KI155/15.

13. On 14 March 2016, the Court informed Applicant Miloratka Nikolić and the Supreme Court about the registration of Referral No. KI157/15 and sent a copy of the Applicant's Referral to the Supreme Court.

14. On 14 March 2016, the Court informed PAK about the registration of Referral No. KI157/15 and requested PAK to submit information to the Court whether the Applicant, Miloratka Nikolić, was included on the list of eligible workers who were entitled to 20% share of the proceeds from the privatization of the SOE „Urata-Voćar“.

15. On 23 March 2016, PAK responded to the request of the Court stating that the legal status of Applicant Miloratka Nikolić was granted by supplemental Judgment AC-I -14-0311-A1 of the Appellate Panel of 17 December 2015. According to it the Applicant was included in the list of eligible employees, entitled to 20% share of the proceeds from the privatization of the SOE „Urata- Voćar“.

16. On 5 April 2016, the Court requested the Supreme Court to submit information about the legal status of Applicant Snežana Zdravković.

17. On 15 April 2016, the Supreme Court responded to the request of the Court stating that the legal status of Applicant Snežana Zdravković was solved by supplemental Judgment AC-I -14-0311-A0001 of the Appellate Panel of 6 April 2016, by which the Applicant was included in the list of eligible employees, entitled to 20% share of the proceeds from the privatization of the SOE „Urata- Voćar“.

18. On 19 April 2016, the Court informed the Applicants and the Supreme Court about the joinder of the cases.

19. On 17 May 2016, the Court deliberated on the case and decided to dismiss the Referral.

Summary of facts

20. On 2 May 2007, the privatization process of the SOE “Urata-Voćar” began.

21. On 21 July 2011, PAK published the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE “Urata-Voćar”.

22. On an unspecified date, the Applicants filed each separate claims with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel). They challenged the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE “Urata-Voćar”.

23. On 29 September 2014, the Specialized Panel with Judgment SCEL- 11-0045 approved the Applicants’ claim, and ordered PAK to include both Applicants in the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE “Urata-Voćar”.

24. PAK filed an appeal with the Appellate Panel against the Judgment. PAK challenged the right of a large number of persons, including the Applicants to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the SOE “Urata-Voćar”.

25. On 15 July 2015, the Appellate Panel with Judgment AC-I-14-0311-A0001-A0023 annulled Judgment SCEL-11-0045 of the Specialized Panel.

26. However, Judgment AC-I-14-0311-A0001-A-0023 of the Appellate Panel didn’t decide on the appeal filed by PAK against the Applicants, namely on the legal status of the Applicants.

27. On 17 December 2015, the Appellate Panel by supplemental Judgment AC-I-14-0311-A1 rejected as ungrounded the appeal submitted by PAK against Applicant Miloratka Nikolić, and ordered PAK to include the Applicant in the final list of eligible employees entitled to 20% share of the proceeds generated by the privatization of the SOE "Urata-Voćar".

28. On 6 April 2016, the Appellate Panel by supplemental Judgment AC-I-14-0311-A001 rejected as ungrounded the appeal submitted by PAK against Applicant Snežana Zdravković, and ordered PAK to include the Applicant in the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".

Applicants' allegations

29. The Applicants allege that Judgment AC-I-14-0311-A0001-A0023 of the Appellate Panel did not decide on the subject of dispute, and consequently, their legal status remained pending in relation to the right to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".

30. The Applicants consider that from the reasoning of the Judgment it can be concluded *"that PAK appeal was rejected"* regarding both Applicants, but "*this conclusion was not presented in the enacting clause of the judgment.*"

31. The Applicants consider that *"it is possible"* that it was a *"technical error"* in the Judgment itself, but if it was not a technical error then they were *"discriminated against on national basis, and the right to work and the right to income were violated."*

32. The Applicants address the Constitutional Court with a request to correct the *"technical error in typing or dictation of the text of the judgment"* and the Applicants *"to be included on the final list of eligible workers who are entitled to 20% share of the proceeds from the privatization of the SOE "Voćar."*

Admissibility of the Referrals

33. The Court recalls that the Applicants challenge the Judgment AC-I-14-0311-A0001-A0023, of the Appellate Panel.

34. The Court finds that the challenged Judgment of the Appellate Panel was modified by supplemental Judgment AC-I-14-0311-A1 of the Appellate Panel regarding the right of Applicant Miloratka Nikolić. It rejected as ungrounded the PAK appeal and ordered that the Applicant be included in the final list of eligible workers who were entitled to 20% share of the proceeds from privatization of the SOE "Urata-Voćar".

35. The Court further notes that the challenged Judgment of the Appellate Panel was modified by supplemental Judgment AC-I-14-0311-A001 of the Appellate Panel regarding the rights of Applicant Snežana Zdravković. It rejected as ungrounded the appeal submitted by PAK and ordered the Applicant to be included in the final list of eligible workers who were entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".

36. The Court notes that the Applicants do not challenge before the Court the respective supplemental Judgments (AC-I-14-0311-A1 and AC-I-14-0311-A001) of the Appellate Panel.

37. The Court further notes that the supplemental Judgments of the Appellate Panel addressed the Applicants complaints.

38. Thus, the supplemental Judgments (AC-I-14-0311-A1 and AC-I-14-0311-A001) of the Appellate Panel are the final decisions in relation to Applicants right to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".

39. Therefore, the challenged Judgment AC-I-14-0311-A0001-A0023 of the Appellate Panel is no more the final decision of the public authority, which was the reason why the Applicants submitted the Referrals to the Court.

40. In this regard, the Court refers to Article 48 of the Law which provides:

> *"In his/her referral, the claimant should accurately clarify (...) what concrete act of public authority is subject to challenge".*

41. The Court also takes into account Rule 32 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules of Procedure, which provides:

> *(4) The Court may dismiss a referral when the Court determines (...) does not otherwise present a case or controversy (...).*

42. The Court considers that the Applicants' referrals are moot, given that the respective supplemental Judgments (AC-I-14-0311-A1 and AC-I-14-0311-A001) of the Appellate Panel decided on the legal status of the Applicants, and PAK was ordered to include both Applicants in the final list of eligible employees who were entitled to 20% of share of the proceeds from the privatization of the SOE „Urata-Voćar".

43. The Court concludes that what was at stake for the Applicants was decided in their favor and there is no more controversy pending.

44. Therefore, the Court finds that the subject matter of the Referrals does no longer present a case or controversy before the Court (see: *A.Y. vs. Slovakia,* ECHR decision, paragraph 49, No. 37146/12 of 24 March 2016, see also, Case: KI143/15, the Applicant: *Donika Kadaj-Bujupi*, the Constitutional Court, the decision to dismiss the Referral of 26 February 2016).

45. In sum, the Court considers that the Applicants' allegations are moot and the Referrals are to be dismissed, in accordance with Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law and Rule 32 (4) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law, and Rule 32 (4) of the Rules of Procedure, in the session held on 17 May 2016, unanimously

DECIDES

I. TO DISMISS 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**

Snezhana Botusharova Arta Rama-Hajrizi

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