



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO



Newsletter

July — December 2017

CONTENT:

SIX MONTHS WORKING REPORT.....2

ACTIVITIES OF THE CONSTITUTIONAL COURT.....4

EXPERIENCES AND PERSONAL PRACTICES.....7

ECtHR – IMPORTANT DECISIONS8

VENICE COMMISSION-IMPORTANT EVENTS.....11

JUDGMENT.....12



Constitution of Kosovo - Chapter VIII

Constitutional Court

Article 112

[General Principles]

1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.
2. The Constitutional Court is fully independent in the performance of its responsibilities.

Composition of the Constitutional Court

The Constitutional Court of the Republic of Kosovo is composed of 9 (nine) Judges.

The Judges of the Constitutional Court of the Republic of Kosovo are appointed in accordance with Article 114 [*Composition and Mandate of the Constitutional Court*] of the Constitution and Articles 6 and 7 of the Law on the Constitutional Court of the Republic of Kosovo.

Following the establishment of the Constitutional Court in 2009 and in accordance with the former Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution, 6 (six) out of 9 (nine) judges were appointed by the President of the Republic of Kosovo on the proposal of the Assembly.

Of the 6 (six) national judges 2 (two) judges served for a non-renewable term of 3 (three) years, 2 (two) judges served for a non-renewable term of 6 (six) years and 2 (two) judges are serving for a non-renewable term of 9 (nine) years.

Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

Currently, the Constitutional Court is composed of 8 (eight) Judges: 6 (six) national judges and 2 (two) international judges.

Status of cases

During the six-month period: 1 July – 31 December 2017, the Court has processed a total of 163 Referrals/Cases. A total of 85 Referrals were decided or 51.2% of all available cases.

During this period, 85 decisions were published on the Court webpage and served to the parties.

The dynamics of received referrals by month (1 July - 31 December 2017)



The following are 9 judgments that the Court rendered during the six month period, 1 July - 31 December 2017:

- Judgment in Case KI 90/16, submitted by: Branislav Jokić. The filed referral requested the constitutional review of non-execution of Decision KKPK/D/R/230/2014 of the Kosovo Property Claims Commission, of 13 March 2014.
- Judgment in Case KI 138/15, submitted by: “Sharr Beteiligungs GmbH” SH.P.K.. The filed referral requested the constitutional review of Judgment Rev. no. 116/2015, of the Supreme Court, of 17 June 2015.
- Judgment in Case KI 10/17, submitted by: Sadije Shabani. The filed referral requested the constitutional review of non-execution of Decision No. 112-158/1 of the Appeals Commission for Civil Servants of the Municipality of Skenderaj, of 12 June 2008.
- Judgment in Case KI 93/16, submitted by: Maliq Maliqi and Skender Maliqi. The filed referral requested the constitutional review of Judgment Rev. no. 321/2012 of the Supreme Court of Kosovo

of Judgment Rev. no. 321/2012 of the Supreme Court of Kosovo, of 13 November 2013.

- Judgment in Case KI 104/16, submitted by: Miodrag Pavić. The filed referral requested the constitutional review of Judgment PML-KZZ. No. 110/2016, of the Supreme Court of Kosovo, of 16 May 2016.
- Judgment in Case KI 33/16, submitted by: Minire Zeka. The filed referral requested the constitutional review of Decision AC. no. 4276/2014 of the Court of Appeals of the Republic of Kosovo, of 9 June 2015.
- Judgment in Case KI 142/16, submitted by: The Appellate Panel of the Special Chamber of the Supreme Court. The filed referral requested the constitutional review of Articles 10 and 40.1.5 of the Annex to Law No. 04/L-034 on Privatization Agency of Kosovo.
- Judgment in Case KI 55/17, submitted by: Tonka Berisha. The filed referral requested the constitutional review of Decision KGJ No. 13/2017, of the Kosovo Judicial Council, of 13 January 2017.
- Judgment in Case KI 81/16, submitted by: Valdete Nikçi. The filed referral requested the constitutional review of Decision Ac. no. 949/16 of the Court of Appeals, of 20 April 2016.

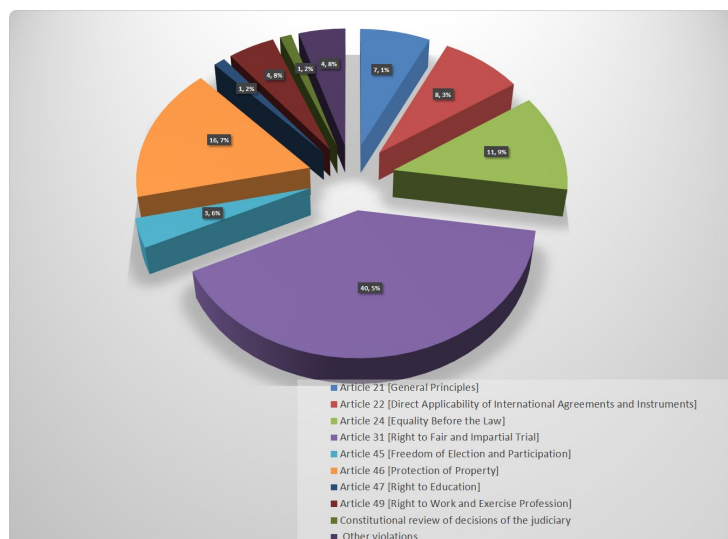
Types of alleged violations

The types of alleged violations in the 84 referrals received during the six-month period: 1 July - 31 December 2017, are the following:

- Article 21 [General Principles], 6 cases or 7.1%;
- Article 22 [Direct Applicability of International Agreements and Instruments], 7 cases or 8.3%;
- Article 24 [Equality before the Law], 10 cases or 11.9%;
- Article 31 [Right to Fair and Impartial Trial], 34 cases or 40.5%;
- Article 45 [Freedom of Election and Participation], 3 cases or 3.6%;
- Article 46 [Protection of Property], 14 cases or 16.7%;
- Article 47 [Right to Education], 1 case or 1.2%;

- Article 49 [Right to Work and Exercise Profession], 4 cases or 4.8%;
- Constitutional review of decisions of the judiciary, 1 case or 1.2%;
- Other violations, 4 cases or 4.8%;

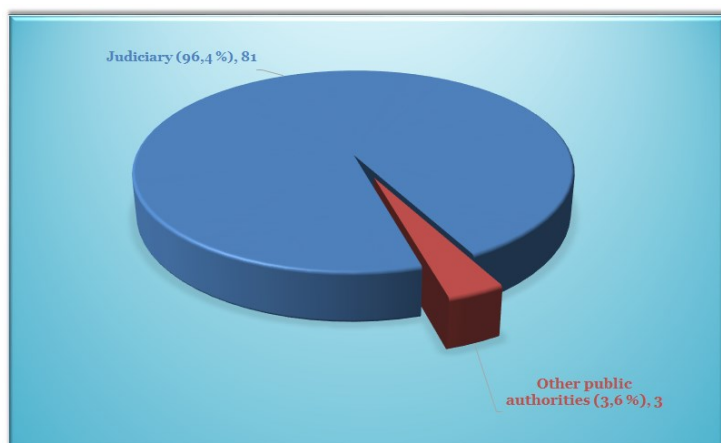
*Alleged violations by type
(1 July - 31 December 2017)*



Alleged violators of rights

- 81 or 96,4 % of Referrals refers to violations allegedly committed by court's decisions
- 3 or 3,6 % of Referrals refers to violations allegedly committed by other public authorities

*Alleged violators of rights
(1 July - 31 December 2017)*



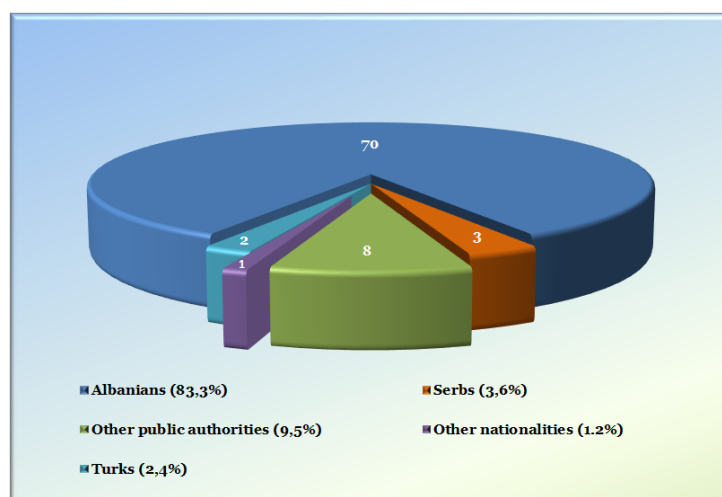
Access to the Court

The access of individuals to the Court is the following:

- 70 Referrals were filed by Albanians, or 83,3%
- 3 Referrals were filed by Serbs, or 3,6%

- 2 Referrals were file by members of the Turkish community, or 2,4%
- 1 Referral was submitted by others, or 1,2%
- 8 Referrals were submitted by other public authorities (legal persons), or 9,5%

*Ethnic structure of the Applicants
(1 July - 31 December 2017)*



Sessions and Review Panels

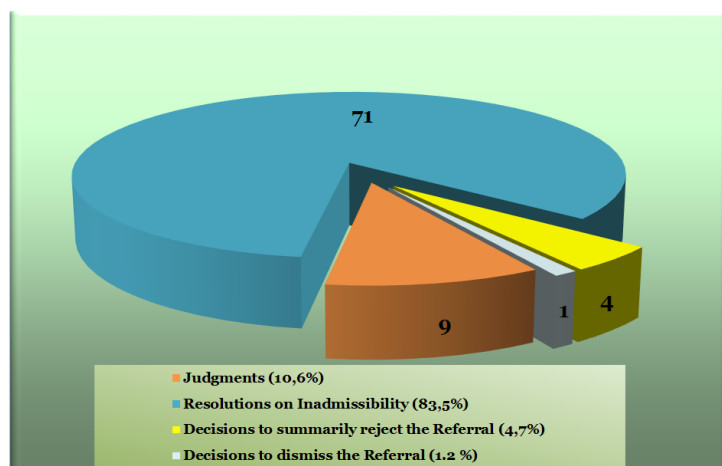
During the six-month period: 1 July - 31 December 2017, the Constitutional Court held 17 plenary sessions and 79 Review Panels in which the cases were resolved by decisions, resolutions and judgments.

From 1 July to 31 December 2017, the Constitutional Court has published 85 decisions.

The structure of the published decisions is the following:

- 9 Judgments (10,6%)
- 71 Resolutions on Inadmissibility (83,5%)
- 4 Decisions to summarily reject the Referral (4,7%)
- 1 Decisions to dismissal the Referral (1,2%)

*Structure of decisions
(1 July - 31 December 2017)*





14 July 2017



The Judge of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka-Nimani, attended the 5th World Justice Forum Conference, which was held in The Hague, Netherlands, from 10 to 13 July 2017.

In addition to participating in a three-day conference of an international character, Judge Caka-Nimani also participated in the Panel Discussion focused on "*Constitution-Building in Post-Conflict Societies*", moderated by Mr. Tom Ginsburg, a Professor of International Law and of Political Sciences at the University of Chicago, and a member of the American Academy of Arts and Sciences.

In the discussion on current concepts and trends regarding the constitutional building processes in post-conflict societies, Judge Caka-Nimani among others presented before the academics of the constitutional law the advantages and weaknesses of the internationalized constitutional making process in the Republic of Kosovo.

25 July 2017

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a farewell meeting the Ambassador of the Republic of Slovenia to Prishtina, Miljan Majhen.

During the conversation, President Rama-Hajrizi thanked Ambassador Majhen for the cooperation so far and for the contribution given to the deepening of mutual relations between the two countries.

She highly appreciated the support provided by the Republic of Slovenia in strengthening the rule of law in Kosovo, in consolidation of the justice institutions, and in the membership of our country in various international organizations. President Rama-Hajrizi further emphasized the excellent cooperation relations with the Constitutional Court of Slovenia, expressing

the conviction that they will be further intensified through the implementation of joint projects and mutual exchange of experiences.

Ambassador Majhen noted that Kosovo should continue its efforts to build a democratic society and expressed assurance that the close co-operation between the two states as well as between the constitutional courts of both countries will continue in the future.



15 September 2017

At the invitation of the Constitutional Court of the Republic of Lithuania and the Venice Commission, the President of the Constitutional Court of the Republic of Kosovo, Ms. Arta Rama-Hajrizi, Deputy President of the Court, Ms. Ivan Čukalović, and Judge, Ms. Gresa Caka-Nimani, stayed in the Lithuanian capital Vilnius from 11 - 14 September 2017.

The delegation of the Constitutional Court of Kosovo stayed in Vilnius with the invitation to attend the 4th Congress of the World Conference on Constitutional Justice, which this year gathered the presidents and judges of constitutional courts and supreme courts from 90 countries of the world.

The 4th Congress was organized on the topic "*Rule of Law and Constitutional Justice in the Modern World*", where participants had the opportunity to discuss and exchange their professional views on the challenges that the rule of law and the constitutional justice continues to face in their countries of origin.

During her stay in Vilnius, President Rama-Hajrizi had separate meetings with the President of the Constitutional Court of Lithuania, Mr. Dainius Zalimas,

as well as with the President of the Venice Commission, Mr. Gianni Buquicchio.

The Constitutional Court of Kosovo became a member of the World Conference on Constitutional Justice on 17 September 2014.



15 September 2017

The Constitutional Court of the Republic of Kosovo and the Council of Europe Office in Prishtina organized a workshop on *"Crisis Communication: ECtHR and its best practices"*, which was held in "Villa Gërmia" in Prishtina.

Special guest and also a moderator of the workshop was Mrs. Tracy Turner-Trenz, Senior Information Officer at the European Court of Human Rights (ECtHR), seated in Strasbourg.

During the presentation held before the judges, the legal advisors and other officials of the Constitutional Court of Kosovo, Mrs. Turner-Trenz initially made a brief description of the work, the role and the function performed by the European Court of Human Rights.

Further on, she discussed into more details about the responsibilities and the work performed by the Media Office of the ECtHR, providing practical examples of everyday communication with the public and various media throughout Europe.

Mrs. Turner-Trenz paid special attention to the ECtHR communication with the media in times of crisis, highlighting for the participants of the workshop some concrete cases that she was faced with and providing detailed explanations as to when and how this international court and its Media Office have reacted

to these challenges.

5 October 2017

The Constitutional Court of the Republic of Kosovo, in cooperation with the Supreme Court of the Republic of Kosovo and with the support of the German Foundation for International Legal Cooperation (IRZ), organized a workshop on: *"Right to a reasoned decision - Its main elements and requirements/ Jurisprudence, views and perspectives of the Supreme Court and of the Constitutional Court"*, which was held in Thessaloniki.

The workshop was attended by judges and legal advisors from both courts, which discussed and exchanged their views on the principles of fair and impartial trial, decision within a reasonable time and the application of the provisions of the European Convention on Human Rights (ECHR), and in particular Article 6 of the Convention. The subject of the discussion was also the impact of the judgments of the European Court of Human Rights (ECtHR) on the case law of Kosovo.

Among the main speakers at the workshop were the former Presiding Judge at the Federal Administrative Court in Leipzig, Dr. Otto Mallmann, as well as Prof. Dr. Michaela Wittinger, professor of the Constitutional Law and European Law at the Federal University of Applied Administrative Sciences in Brühl, Germany, who during their presentation provided a general overview of the German case law on the right to a reasoned decision and application of Article 6 of the ECHR.



25 October 2017

The Constitutional Court of the Republic of Kosovo celebrated the 8th Judicial Year with a solemn ceremony held at "Dyar" Hall of the "Swiss Diamond Hotel" in Prishtina. The ceremony was attended by the highest-rank state officials, accredited representatives of diplomatic missions and international organizations in the country as well as highest-level delegations from the Constitutional Court of Albania, Constitutional Court of Montenegro, Constitutional Court of Macedonia, Constitutional Court of Bulgaria, Constitutional Court of Turkey and

the Supreme Court of Albania. The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, the President of the Republic of Kosovo, Mr. Hashim Thaçi, the President of the Assembly of the Republic of Kosovo, Mr. Kadri Veseli, the Prime Minister of the Republic of Kosovo, Mr. Ramush Haradinaj, and the former President of the Constitutional Court of the Republic of Croatia, Ms. Jasna Omejec, addressed the participants with an occasion speech.



20 December 2017

The Constitutional Court of the Republic of Kosovo in cooperation with the Academy of Justice of the Republic of Kosovo organized a joint workshop on the topic, *“The Role and Jurisdiction of the Constitutional Court. Relation with Ordinary Courts and Other Institutions. Requirements under Articles 113.7 and 113.8 of the Constitution of the Republic of Kosovo”*, which was held at the Courtroom of the Constitutional Court.

The workshop aimed at informing new judges of the ordinary courts in the Republic of Kosovo about the role and jurisdiction of the Constitutional Court in relation to ordinary judiciary and other levels of power. The attendees were informed about these matters into more detail by the Chief Legal Advisor of the Court, Mr. Sevdail Kastrati, and Legal Advisor Mrs. Arbana Beqiri-Plakolli.

During the workshop, legal advisors Kastrati and Beqiri-Plakolli informed the new judges into more detail about the workflow process in the Constitutional Court, receipt and processing of the referrals submitted by different parties, admissibility criteria for the submitted referrals and decision-making process of judges.

Their presentation focused particularly on the review

of decisions of the public authorities vis-à-vis Chapter II of the Constitution by the Constitutional Court and the review of challenged acts vis-à-vis the Constitution by the ordinary courts.



A brief presentation on relations of the Constitutional Court with the Venice Commission, receipt of the requests with questions submitted by the constitutional courts and supreme courts of member states via the Venice Commission Forum, and submission of the requests of the Court to this forum, was made by Mr. Veton Dula, Head of Communication and Information Office and Liaison Officer of the Constitutional Court with the Venice Commission.



Nexhat Kelmendi

Traineeship programme at
the European Court of Human Rights
Strasbourg

It was my honour and privilege to attend the 5-months study visit programme at the European Court of Human Rights in Strasbourg, as part of the project funded by the Swiss Government and supported by the Council of Europe Office in Pristina.

Upon my arrival at the Court, I was assigned to the Fourteenth Division, which consisted from the countries of Western Balkans, where I used to work under the direct supervision of Mr. Peter Kempees, Head of the Division, Mr. Ylli Peço, main lawyer for cases against Albania and with Mrs. Erinda Meli, a lawyer assigned in the cases against Albania.

Before starting working on actual cases, I have attended the necessary training as regards the use of the case management system. Although at first sight this may seem to be an experience of a rather technical nature, it is a very important tool to understand the organization and the structure of ECtHR in terms of case management system, which provides unlimited possibilities for research work on very specific issues.

After the completion of my scheduled trainings, I started working with WECL cases (well-established case-law) and applications against Albania under the supervision of Mr. Ylli Peço. These cases mainly included matters of civil-property nature whereas the applications mainly concerned allegations of violation of Article 6, in conjunction with Article 1 of Protocol 1 to the Convention. At a later stage, I was also assigned to deal with cases of criminal nature which mainly concerned alleged violations of Article 3 (Prohibition of Torture), Article 5 (Right Liberty and Security) and Article 6 (Right to a Fair Trial) of the Convention.

In addition to my work with actual cases, I have also contributed quite frequently in the translation of specific regulations of the Court from English language into Albanian language. A very interesting and professionally worth experience was also my participation at the meetings of the ECtHR Judges wherein the Grand Chamber cases were discussed, and the frequent training sessions which were organized by the Court and the Council of Europe.

Lessons learned

The experience gained from my study visit at the ECtHR has fulfilled my expectations and has definitely helped me deepen my professional knowledge on human rights. The importance and the value of this project are even greater when one considers the nature of the work and obligation of the Constitutional Court of Kosovo to apply the jurisprudence of the ECtHR in individual cases (individual complaints). I've also come to understand that only when you get to practically know the work of the ECtHR that you can realize why so many sovereign countries, relying only on their free will, undertook the ratification of the Convention and why the Court has managed to extend its influence even to those countries which are not obliged by the Convention. Such an example is even the country where I come from - the Republic of Kosovo.

In its Article 53 [Interpretation of Human Rights Provisions] the Constitution of the Republic of Kosovo provides that: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*. This formulation of the Article 53 of the Constitution has made the application of the jurisprudence of the ECtHR a constitutional obligation for all the courts of Kosovo. Hence, I believe that this reflects quite obviously the importance of this study visit for me and for my other colleagues at the Constitutional Court of Kosovo who were part of the same project.

Lastly, I wish to express my gratitude to the Constitutional Court of Kosovo, the Swiss Government and the Council of Europe Office in Pristina whose generous support made it possible for me to undertake the Traineeship programme at the ECtHR. I would also like to use this opportunity to express my sincere appreciation to the former President of the Constitutional Court of Kosovo, Mr. Enver Hasani, to the current President of the Court, Mrs. Arta Rama-Hajrizi, to all judges of the Court, the Swiss Government and the Council of Europe Office in Prishtina, for making this project possible. I would like to also thank for their welcoming and continuous support Mr. Michael Wischuf, Deputy-Registrar, Mrs. Audrey Gabilly, Traineeships Coordinator, and also all those with whom I worked on daily basis at the ECtHR: Mr. Peter Kempees, Mr. Ylli Peço, Mrs. Erinda Meli and the whole staff of the Division 14.

ECTHR – Important decisions (1 July – 31 December 2017)

* **Ban on wearing face covering in public in Belgium did not violate Convention rights (11/07/2017)**

In its judgment in the case of *Belcacemi and Oussar v. Belgium* (application no. 37798/13) the European Court of Human Rights held, unanimously, that there had been: **no violation of Articles 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion)** of the European Convention on Human Rights, **and no violation of Article 14 (prohibition of discrimination)** taken together with Articles 8 and 9. The case concerned the ban on the wearing in public of clothing that partly or totally covers the face under the Belgian law of 1 June 2011. The Court found in particular that the restriction sought to guarantee the conditions of “living together” and the “protection of the rights and freedoms of others” and that it was “necessary in a democratic society”.

Firstly, as in the case of *S.A.S v. France*, the Court found that the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the “protection of the rights and freedoms of others” and that the ban was justifiable in principle, solely to the extent that it sought to guarantee the conditions of “living together”. In that connection, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context.

Therefore, in adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which, for the State, was essential to ensure the functioning of a democratic society.

The question whether the full-face veil was to be accepted in the Belgian public sphere was thus a choice of society. Secondly, as regards the proportionality of the restriction, the Court noted that the sanction for noncompliance with the ban under Belgian law could range from a fine to a prison sentence. Imprisonment was reserved, however, for repeat offenders and was not applied automatically. In addition, the offence was classified as “hybrid” in Belgian law, partly under the criminal law and partly administrative.

Thus, in the context of administrative action, alternative measures were possible and taken in practice at municipal level.

exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education.

* **Decision to restrict communication between lawyer and accused on the grounds of protecting State secrets was contrary to the Convention (25/07/2017)**

The case of *M v. the Netherlands* (application no. 2156/10) concerned a former member of the Netherlands secret service who had been charged with leaking State secrets. The applicant, Mr M, complained before the European Court of Human Rights that the ensuing criminal proceedings had been unfair. In its judgment, the Court held, unanimously, that there had been **a violation of Article 6 §§ 1 (right to a fair trial) and 3 (c) (right to legal assistance of own choosing)** of the European Convention on Human Rights. The Court found that as a result of the threat of prosecution should Mr M divulge State secrets to his lawyers, communication between him and his counsel was not free and unrestricted as to its content, thus irretrievably compromising the fairness of the proceedings against him. However, the Court further held, unanimously, that there had been **no violation of Article 6 §§ 1 (right to a fair trial) and 3 (b) and (d) (right to adequate time and facilities for preparation of defence and right to obtain attendance and examination of witnesses)** of the Convention. In particular, the refusal of members of the secret services to answer questions put to them by the defence because of their duty of secrecy had not been contrary to Article 6 §§ 1 and 3 (d). The applicant explained that his strategy had been to demonstrate that someone else could have divulged the classified information, and that that line of defence had been compromised as he couldn't properly question the witnesses from the secret services. The Court noted that this was a perfectly legitimate defence strategy in theory. However, considering the sheer volume of evidence linking him to the crime, he had not been entitled to make specious demands for information in the hope that an alternative explanation might present itself. The Court observed that a new trial or the reopening of the domestic proceedings at the request of the applicant represents an appropriate way to redress the violation.

* **Monitoring of an employee's electronic communications amounted to a breach of his right to private life and correspondence (05/09/2017)**

The case of *Bărbulescu v. Romania* (application no. 61496/08) concerned the decision of a private company to dismiss an employee after monitoring his electronic communications and accessing their contents, and the alleged failure of the domestic courts

to protect his right to respect for his private life and correspondence.

In its Grand Chamber judgment in the case, the European Court of Human Rights held, by eleven votes to six, that there had been: **a violation of Article 8 (right to respect for private and family life, the home and correspondence)** of the European Convention on Human Rights.

The Court concluded that the national authorities had not adequately protected Mr Bărbulescu's right to respect for his private life and correspondence. They had consequently failed to strike a fair balance between the interests at stake. In particular, the national courts had failed to determine whether Mr Bărbulescu had received prior notice from his employer of the possibility that his communications might be monitored; nor had they had regard either to the fact that he had not been informed of the nature or the extent of the monitoring, or the degree of intrusion into his private life and correspondence.

In addition, the national courts had failed to determine, firstly, the specific reasons justifying the introduction of the monitoring measures; secondly, whether the employer could have used measures entailing less intrusion into Mr Bărbulescu's private life and correspondence; and thirdly, whether the communications might have been accessed without his knowledge.

*** Ordering a journalist to give evidence on a source was not justified, even though the source himself had come forward to the police (05/10/2017)**

The case *Becker v. Norway* (application no. 21272/12) concerned a journalist, Cecilie Becker, for a daily newspaper who was ordered to give evidence in a criminal case brought against one of her sources, Mr X, for market manipulation. Mr X had confirmed to the police that he had been Ms Becker's source for an article she had written in 2007 about the Norwegian Oil Company's allegedly difficult financial situation.

The company's stock decreased after the article. Mr X was subsequently charged with using Ms Becker to manipulate the financial market. Ms Becker refused to testify at any stage of the proceedings against Mr X, and the courts therefore ordered her to testify about her contacts with him, finding that there was no source to protect as he had already come forward. They also considered that her evidence might significantly assist the courts in elucidating the case. Mr X was however convicted as charged before the final decision on her duty to give evidence had been made.

In its judgment in the case, the European Court of Human Rights held unanimously, that there had been: **a violation of Article 10 (freedom of expression)** of the ECHR. The Court found that its assessment turned, above all, on whether Ms Becker's evidence

had been needed during the criminal investigation and subsequent court proceedings against her source. It pointed out that her refusal to disclose her source (or sources) had not at any point in time hindered either the investigation or proceedings against Mr X. Indeed, the first-instance court which convicted Mr X had been informed by the prosecutor that no motion for extension (pending a final decision on the duty to give evidence) had been made, because the case had been sufficiently disclosed even without Ms Becker's statement.

It also bore in mind that Ms Becker's journalistic methods had never been called into question and she had not been accused of any illegal activity. Furthermore, her right as a journalist to keep her sources confidential could not automatically be removed because of a source's conduct or because the source's identity had become known. The Court was not therefore convinced that either the circumstances in the present case or the reasons provided had justified compelling Ms Becker to testify.

*** Camera surveillance of lecture halls in Montenegro violated professors' right to privacy (28/11/2017)**

In its judgment in the case of *Antović and Mirković v. Montenegro* (application no. 70838/13) the European Court of Human Rights held: by four votes to three, that there had been **a violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned an invasion of privacy complaint by two professors at the University of Montenegro's School of Mathematics, Nevenka Antović and Jovan Mirković, after video surveillance had been installed in areas where they taught. They stated that they had had no effective control over the information collected and that the surveillance had been unlawful. The domestic courts rejected a compensation claim however, finding that the question of private life had not been at issue as the auditoriums where Ms Antović and Mr Mirković taught were public areas.

The Court first rejected the Government's argument that the case was inadmissible because no privacy issue had been at stake as the area under surveillance had been a public, working area. The Court noted that it had previously found that "private life" might include professional activities and considered that was also the case with Ms Antović and Mr Mirković. Article 8 was therefore applicable.

On the merits of the case, it found that the camera surveillance had amounted to an interference with their right to privacy and that the evidence showed that that surveillance had violated the provisions of domestic law. Indeed, the domestic courts had never even considered any legal justification for the surveillance because they had decided from the outset that there had been no invasion of privacy.

*** Refusal of Slovenian authorities to grant old-age pension to a former citizen of Serbia (05/12/2017)**

The case *Ribač v. Slovenia* (no. 57101/10) concerned the authorities' refusal to grant Mr. Arandel Ribač, a Slovenian national who was born in 1942 and lives in Maribor (Slovenia), an old-age pension between November 1998 and April 2003. Mr Ribač was a citizen of Serbia within the Socialist Federal Republic of Yugoslavia (the SFRY) but has been residing in Slovenia since 1964. He was an officer in active military service in the Yugoslav People's Army until September 1991, when he retired. In February 1992, he applied for an advance of his military pension under the relevant Ordinance enacted in 1992 by the Republic of Slovenia, which in June 1991 had become independent from the SFRY. By a decision of May 1993, the Slovenian pension authorities found that he had been entitled to such an advance, starting from November 1991. In October 1998, the pension authorities issued a decision not to convert Mr Ribač's advance on his military pension into an old-age pension – under an Act on the Rights Stemming from the Pension and Disability Insurance of Former Military Personnel enacted in 1998 – on the grounds that he did not fulfil the statutory conditions. His advance was accordingly suspended. The authorities dismissed his appeal in September 2002, holding that he could not be a beneficiary as he did not have Slovenian citizenship and did not comply with the requirements applicable to foreign beneficiaries. He subsequently acquired Slovenian citizenship and was granted an old-age pension as from April 2003. An application for judicial review of the 2002 decision which Mr Ribač had lodged in the meantime was dismissed by the labour and social court in January 2006. His appeals were dismissed and the Constitutional Court eventually decided, in March 2010, not to accept his constitutional complaint for consideration. Mr Ribač complained that the refusal to grant him an old-age pension between November 1998 and April 2003 on the grounds that he had not had Slovenian citizenship had been in breach of Article 14 (prohibition of discrimination) taken in conjunction with Article 1 of Protocol No. 1 (protection of property). In its judgment in the case, the European Court of Human Rights held unanimously, that there had been: **a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1** of the European Convention on Human Rights and awarded the applicant just satisfaction in the amount of: EUR 37,000 (pecuniary damage), EUR 5,000 (non-pecuniary damage) and EUR 3,570 (costs and expenses).

*** New infringement procedure used for first time over 2014 judgment against Azerbaijan on opposition politician Mammadov (14/12/2017)**

The European Court of Human Rights (ECHR) is to examine whether Azerbaijan has refused to abide by the ECHR's judgment in the case of imprisoned opposition politician Ilgar Mammadov, the first use of a new infringement procedure. The procedure was introduced into the European Convention on Human Rights in 2010 and allows the Committee of Ministers, which has the responsibility under the Convention for supervising the execution of the Court's judgments, to refer a question to the ECHR about whether a country has refused to abide by a final judgment.

The Committee decided on 5 December 2017 to launch the proceedings against Azerbaijan owing to the authorities' persistent refusal to ensure Mr Mammadov's unconditional release following the ECHR's 2014 finding of multiple violations of his rights. The ECHR received the formal request from the Committee on 11 December. The procedure will be before the ECHR's Grand Chamber. Mr Mammadov, born in 1970, was arrested and placed in detention in 2013 following protests in the town of Ismayilli. He is currently serving a seven-year prison sentence following his conviction in 2014 of mass disorder and violence against public officials. The ECHR found in 2014 that Mr Mammadov had been arrested and detained without any evidence to reasonably suspect him of having committed a criminal offence and concluding that the actual purpose of his detention had been to silence or punish him for criticising the Government. It found violations of Article 5 §§ 1 and 4 (right to liberty and security), Article 6 § 2 (right to the presumption of innocence), and Article 18 (limitation on use of restrictions on rights) of the European Convention.

The Committee of Ministers has launched the infringement proceedings under paragraph 4 of Article 46 (binding force and enforcement of judgments) of the Convention. The Article allows the Committee to refer a question to the ECHR as to whether a country has failed to abide by an ECHR judgment. The Committee first has to serve formal notice on the country concerned, which it did in this case in October, and then adopt a referral decision by a two-thirds majority. The ECHR will consider the question as a Grand Chamber, its highest judicial formation. The Committee of Ministers and the parties concerned will be able to submit written comments in accordance with a deadline set by the President of the Grand Chamber. The Grand Chamber might also decide to hold a hearing. If the Grand Chamber finds a violation because Azerbaijan has failed to abide by the ECHR's judgment of 2014 in the case, it will refer the case back to the Committee of Ministers for consideration of the measures to be taken. A finding of no violation also leads to the case being referred back to the Committee of Ministers, which then closes its examination.

(For more details please visit the website of the European Court of Human Rights: www.echr.coe.int)



1. Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP)

February 2018

Bissau - Seminar of the Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries (CJCPLP).

2. 114th Plenary Session of the Venice Commission of the Council of Europe

16 – 17 March 2018

Venice - Scoula Grande di San Giovanni Evangelista.

3. World Conference on Constitutional Justice

17 March 2018

Venice - 13th meeting of the Bureau of the World Conference on Constitutional Justice.

4. International conference on the occasion of the 25th anniversary of the Constitutional Court of Slovakia

11 April 2018

Košice - The Constitutional Court of Slovakia will organise an international conference on "*Constitutional Justice - Challenges and Perspectives*" at the occasion of its 25th anniversary.

5. Ibero-American Conference of Constitutional Justice (CIJC)

May 2018

Panama – XIIth Ibero-American Conference of Constitutional Justice.

6. Constitutional Justice - Latvia

24 – 25 May 2018

Riga - The Constitutional Court of Latvia will organise the international conference on the topic, "*The Role of the Constitutional Courts in the Globalized World of the 21st Century*".





Judgment

KO 55/17

Applicant

Tonka Berisha

Request for constitutional review of Decision KGJ No. 13/2017 of the Kosovo Judicial Council, of 13 January 2017

In the Referral submitted on 28 April 2017, the Applicant, Ms. Tonka Berisha challenged Decision No. 13/2017 of the Kosovo Judicial Council (KJC), of 13 January 2017, on the election of Hasan Shala as the President of the Court of Appeals of Kosovo. The Applicant alleges that in the election of the new President of the Court of Appeals, in which she was also one of the candidates, her rights guaranteed by the Constitution of the Republic of Kosovo and the European Convention of Human Rights (ECHR) were violated.

I. Following the announcement of the KJC vacancy for the position of the President of the Court of Appeals on 4 November 2016 and the interview of the three candidates on 19 December 2016, the Applicant was ranked first in the list with 100 points earned while Hasan Shala was ranked second with 84 points earned. On 13 January 2017, the first round of voting was conducted by members of the Commission for Evaluation and Interviewing of the Candidates. The Applicant, ranked first on the list based on the points earned, based on the average points of the Commission was voted first and earned 2 votes “in favor” 1 vote “against” and 6 “abstentions”. According to the KJC, she did not receive the necessary majority of votes, and the voting procedure continued for the second candidate. In the second round that took place on the same day, the candidate Hasan Shala, ranked as the second candidate on the list, received 7 votes “in favor”, 1 vote “against” and 1 “abstention”. Therefore, the KJC chose Mr. Hasan Shala in the position of the President of the Court of Appeals of Kosovo. The Applicant alleged in her Referral a violation of her rights guaranteed by 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 Article 108.4 [Kosovo Judicial Council] of the Constitution of the Republic of Kosovo in the election process

conducted by the KJC. In addition, the Applicant also alleged violation of Article 13 (Right to an effective remedy) of the ECHR, Article 32 [Right to Legal Remedies] of the Constitution of Kosovo in conjunction with Article 13 (Right to an effective remedy) of the ECHR and a violation of Article 54 [Judicial Protection of Rights] of the Constitution. Meanwhile, regarding the non-exhaustion of effective legal remedies in her case, the Applicant referred to the Judgments of the Court in the cases: KI06/10, *Valon Bislimi v. Ministry of Internal Affairs, the Kosovo Judicial Council and the Ministry of Justice*, as well as the Judgment of the Court in case no. KI99/14 and KI100/14, constitutional review of decisions of the Kosovo Prosecutorial Council related to the election procedure of the Chief State Prosecutor.

II. After having found the Referral admissible and filed in accordance with the 4 (four) month deadline set forth in Article 49 of the Law on the Constitutional Court, the Court noted that the provisions of Law No. 03/L-223 on the Kosovo Judicial Council, do not provide legal remedies against the decision challenged by the Applicant. According to the Court's assessment, the KJC did not substantiate the allegation that in the present case, the Applicant could have initiated an administrative conflict and use legal remedies available to her under Law No. 03/L-202 on Administrative Conflicts, with the relevant case law, where it would be shown that the Applicant would have had reasonable prospects of success in the event she opted to initiate an administrative conflict. The Court further held that, “taking into consideration the specificity of the election procedure for the position of the President of the Court of Appeals and the necessity this to be done in a timely fashion, the Court is of the opinion that there is no legal remedy which addresses effectively the allegations raised by the Applicant”. The Court also found that “the present case raises issues of ‘equality before the law’ for all candidates involved in the voting process for the position of the President of the Court of Appeals, and with this implication, the Court considers that the Article 24.1 of the Constitution was violated”.

And when it comes to the electoral process, the Court recalled that “in the voting process, a fundamental aspect of the principle of “equality” is that each candidate shall benefit from ‘equality of opportunities’. This means that all candidates will have the opportunity to be considered fairly and equally”. According to the Court, in the voting process applied by the KJC, there was in fact no choosing among alternatives, because each candidate was voted upon separately. In addition, in each round of voting, each of the persons voting had the opportunity again to vote in favor or against the candidate being voted upon. The Court further observed that the manner the voting process has been regulated and conducted raises doubts as to its legal certainty and to the proper administration of the judicial system and its formation. Finally, the Court considered that the voting process conducted by the KJC constitutes unfairness in the proceeding of the vote because it is impossible to know who actually had the support of the majority of the voting members and who did not, and concluded that the KJC should conduct a new voting process.

INFORMATION ON THE COURT

The building of the Constitutional Court:

The Constitutional Court of the Republic of Kosovo, since it became functional in 2009, has been located in the building of the former Kosovo Protection Corps - KPC, located in the center of Prishtina, in the area of Pejton. The position of the Court in the center of the capital city, symbolizes an equal access to all citizens and other authorized parties to the Constitutional Justice. Over the years this building has been adapted according to the needs and nature of work of the Constitutional Court. This has been carried out with the support of our donors namely, the construction of the Courtroom has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the library of the Court was entirely supported by GIZ - the Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011. This building is composed of a total area of 784 m2 and is used by 65 employees of the Court.



ADDRESS

Street: "Perandori Justinian", nr. 44, 10000, Prishtina
Tel: +381 (0)38 60 61 62
Mob: +377 (0)45 200 595; +377 (0)45 200 576
Fax: +381 (0)38 60 61 70
E-mail: gjykata.kushtetuese@gjk-ks.org
Web: www.gjk-ks.org