



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 11 June 2018
Ref. No.: AGJ 1260/18

JUDGMENT

in

Case No. KI62/17

Applicant

Emine Simnica

Constitutional review of Decision PN. II. No. 1/17 of the Supreme Court of Kosovo of 30 January 2017 related to the Decision PML. No. 300/16 of the Supreme Court of 12 December 2016

CONSTITUTIONAL COURT OF REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
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 Emine Simnica from Prishtina (hereinafter: the Applicant), represented by lawyers Abit Asllani and Teuta Zhinipotoku.

Challenged decision

2. The Applicant challenges Decision PN. II. No. 1/17 of the Supreme Court of 30 January 2017, related to the Decision PML. No. 300/16 of the Supreme Court of 12 December 2016.
3. The challenged decision was served on the Applicant on 7 February 2017.

Subject matter

4. The subject matter is the constitutional review of the abovementioned decision of the Supreme Court, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 16 [Supremacy of the Constitution], Article 19 [Applicability of International Law], Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law], Article 30 [Rights of the Accused] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with 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 Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 31 May 2017, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).
7. On 1 June 2017, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 13 June 2017, the Court notified the Applicant and the Supreme Court about the registration of the Referral. By it was requested from the Applicant to complete the Referral by submitting the completed referral form.
9. On 18 July 2017, the Applicant submitted the complete the Referral to the Court.
10. On 30 August 2017, the Court requested the Supreme Court and the Basic Court in Prishtina to submit a copy of the acknowledgment on receipt by which the Supreme Court requested the Applicant to submit a power of attorney for a legal representative.

11. On 13 September 2017, the Court again requested the Supreme Court and the Basic Court in Prishtina to submit the previously requested documents.
12. On 14 November 2017, taking into account the fact that the Court did not receive any reply to the previous requests, the Court requested the Supreme Court and the Basic Court to submit a complete file of the case under Decision [PN. II. No. 1/17] of the Supreme Court of 30 January 2017 and Decision [PML. No. 300/16] of the Supreme Court of 12 December 2016.
13. On 18 December 2017, the Supreme Court replied: *"We inform you that this case has been decided and it was submitted to the Basic Court in Prishtina on 02.02.2017. Therefore, you can request the case file from the Basic Court in Prishtina"*.
14. On 25 January 2018, taking into account the reply of the Supreme Court and the fact that the Court did not receive a reply to the previous requests made to the Basic Court, the Court again requested the Basic Court to submit the complete file of the said case.
15. On 9 February 2018, the Basic Court submitted a complete file of the said case.
16. On 29 May 2018, the Review Panel deliberated on the report of Judge Rapporteur and recommended to the Court the admissibility of the Referral.

Summary of facts

17. On 18 September 2015, the Basic Prosecution Office in Prishtina filed an indictment [PP.I.br.572/2015] against the Applicant on suspicion of having committed the criminal offense of fraud in the distribution of medicine at the University Hospital Clinical Centre of Prishtina (hereinafter: UHCC) to the detriment of the budget of Kosovo.
18. On 30 May 2016, the Basic Court in Prishtina Judgment PKR. No. 353/2015 following the Applicant's guilty plea, found the Applicant guilty of the commission of the criminal offense. By this Judgment the Applicant was imposed a suspended sentence, and the court also obliged the Applicant to compensate the material damage caused by the committed criminal offense.
19. After that, the Applicant paid the compensation which he had been ordered to pay, by way of pecuniary damage to the amount of 27,527.00 Euros to the budget of the Republic of Kosovo - Ministry of Health.
20. The Applicant, the state prosecutor, and the UHCC, in the capacity of the injured party, filed the appeals with the Court of Appeals against Judgment PKR. No. 535/2015 of the Basic Court of 30 May 2016.
21. On 13 July 2016, the Prosecutor proposed to the Court of Appeals: *"modification of the challenged Judgment in order to impose to the convicted person a more aggravating sentence of imprisonment."*

22. On 29 July 2016, the Court of Appeals, rendered Judgment PAKR. No. 398/2016, approved the appeal of the state prosecutor and modified the first instance judgment regarding the decision on the imposed imprisonment sentence, so that the Applicant was imposed an effective imprisonment sentence instead of a suspended sentence.
23. The reasoning of the Judgment of the Court of Appeals, regarding the modification of the suspended sentence to an effective sentence states, *inter alia*:
- “The circumstances, which were ascertained and assessed by the first instance court when imposing the sentence on the accused E.S., pursuant to the assessment of this court, do not have such a nature that on the accused is imposed such a lenient sentence such as the suspended sentence.”*
24. On 31 August 2016, against Judgment PAKR. No. 398/2016 of the Court of Appeals, the Applicant submitted a request for protection of legality to the Supreme Court, *“due to substantial violations of the criminal procedure provisions and violations of the criminal code by proposing to the Supreme Court to annul the challenged judgments and to remand the case to the Court of the first instance for retrial or to modify it in order to impose a more mitigating sentence.”*
25. On 12 December 2016, the Supreme Court (Decision PML. No. 300/2016) reject as inadmissible the request for protection of legality. In the reasoning of the decision, the Supreme Court states:
- “from the challenged judgments it follows that the defence counsel of the convict Emine Rama - Simnica, in all stages of the criminal procedure was the lawyer Abit Asllani from Prishtina, who submitted the appeal against the Judgment of the first instance. The request for protection of legality was submitted by the lawyer Teuta Zhinipotoku from Prishtina while the case file does not contain any evidence that the defense counsel in question was authorized to use this legal remedy.”*
26. On 28 December 2016, against Decision PML. No. 300/2016 of the Supreme Court, the Applicant filed a request for annulment of the decision on the grounds that *“he submitted the authorization to the Basic Court in Prishtina together with the request which is confirmed by the receipt stamp, based on Article 442, paragraph 4, of the CPCK, which foresees that if the submission is not understandable or does not contain what is necessary to act in relation to the submission, the Court summons the party to fulfill or correct it and in order to make justice and to realize the principle of justice.”*
27. On 30 January 2017, the Supreme Court [Decision PN. II. No. 1/2017], reject as inadmissible the request for the annulment of Decision PML. No. 300/2016 of the Supreme Court. In the reasoning of the decision, the Supreme Court stated:

“The provisions of Article 418 of the CPCK, define decisively the cases when the extraordinary legal remedies can be applied against final decisions, while in the present case the defense counsel of the convict submitted a request for annulling the Decision and rendering a Decision based on merit upon the request for protection of legality against the Decision of the Supreme Court of Kosovo, the request cannot be considered as an extraordinary legal remedy; therefore, as such, this Court considers that it should be dismissed as inadmissible.”

Applicant’s allegations

28. The Applicant alleges that in Judgment PAKR. No. 398/2016, the Court of Appeals violated her right to a fair trial because it modified the judgment of the first instance court and transferred the suspended sentence into an effective imprisonment sentence, in the absence of the Applicant. The Court of Appeals was obliged to summon the Applicant to participate in the hearing before the second instance court. The Court of Appeals did not do that and thus it also violated Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
29. The Applicant also alleges that the Supreme Court upon receipt of the request for protection of legality, was obliged under the law *“in the absence of a power of attorney or a relevant letter in the case file to address the representing party with a letter giving a short legal/court deadline to correct any possible flaw so that the proceeding continues according to the law”*. However, the Supreme Court, in its decision PML. No. 300/2016, failed to respect its legal obligations and rejected the request for protection of legality with the reasoning that the alleged power of attorney was not in the case file. Thereby, the Supreme Court denied the Applicant of any access to a court because it refused her the prior possibility of correcting and supplementing her submissions.
30. At the same time, the Applicant alleges that, after rejecting her request for protection of legality, she addressed the Supreme Court with a request to *“annul its decision of 12.12.2016 and to remand the matter for decision on merits by informing the court about the legal obligations under Article 442, paragraph 4, of the applicable Criminal Procedure Code.”* However, this request was also rejected by the Supreme Court, and thus the right to a fair trial and access to the court was denied to her.
31. The Applicant requests the Court to approve the Referral, and *“based on the Constitution, [...], to **hold** a violation of constitutional provisions, [...], to **recommend to remand** the case to the Court of Appeals for reconsideration and retrial [...].”*

Admissibility of Referral

32. The Court first examines whether the Applicant has met the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
33. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

„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”.

34. The Court further examines whether the Applicant fulfilled the admissibility requirements as prescribed in the Law. In that regard, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 48 [Accuracy of the Referral]

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

Article 49 [Deadlines]

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

35. Regarding the fulfillment of these requirements, the Court notes that the Applicant has filed the Referral as an individual and in the capacity of an authorized party challenging the act of a public authority, namely Decision PN. II. No. 1/17 of the Supreme Court of 31 January 2017, after exhaustion of all legal remedies. The Applicant also clarified the rights and freedoms she claims to have been violated in accordance with Article 48 of the Law and filed the Referral in accordance with the deadlines foreseen by Article 49 of the Law.
36. However, the Court should further examine whether the requirements established in Rule 36 of the Rules of Procedure have been met.
37. Rule 36 [Admissibility Criteria], paragraph (1) (d) and (2) (d) of the Rules of Procedure provides:

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

[...]

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

(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. “

38. The Court first notes that the Applicant alleges violations of the supremacy of the Constitution, the applicability of international law, the general principles, the direct applicability of international agreements and instruments, equality before the law, the right of access to court and the right to a fair and impartial trial, as guaranteed by the Constitution.
39. The Court also notes that, in essence, the Applicant's Referral is based on a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
40. Finally, the Court notes that the Applicant has accurately clarified the alleged violations of the Constitution and the ECHR. Therefore, the Court finds that this Referral is not manifestly ill-founded within the meaning of Rule 36 (1) (d) of the Rules of Procedure. Furthermore, it notes that it is not inadmissible on any other ground. Therefore it is to be declared admissible (see: case *Alimuçaj v. Albania*, ECtHR, application No. 20134/05, judgment of 9 July 2012, para. 144).

Merits

41. The Court recalls that the Applicant's main allegation is of a violation of the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR because:

The Supreme Court without prior determination of the facts that are of importance for the continuation of the proceedings rejected the request for protection of legality of the Applicant's legal representative, because according to the assessment of the Supreme Court, the request was submitted by an unauthorized party.

42. The Court refers to the relevant provisions of the Constitution and the ECHR:

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

“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.”

Article 6 (Right to a fair trial) of ECHR:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

[...]

3. Everyone charged with a criminal offence has the following minimum rights:

[...]

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

43. The Court also reiterates that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution *„human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*.
44. In this regard, the Court first notes that the case law of the ECtHR constantly considers that the fairness of the proceedings is assessed based on the proceedings as a whole (see: ECtHR Judgment, *Barbera, Messeque and Jabardo v. Spain*, No. 146, paragraph 68. Therefore, in the procedure of assessing the grounds of the Applicant’s allegations, the Court will adhere to these principles.
45. The Court notes that the Applicant’s main allegation is a violation of Article 31 of the Constitution in conjunction with Article 6 ECHR. The Applicant alleges that the Supreme Court had a legal obligation to officially request the power of attorney from the Applicant or her legal representative. The Applicant further claims that the Supreme Court by this omission deprived her of the right to a fair trial.
46. The Applicant presented these arguments before the Supreme Court in the appeal of 28 December 2016 against the first Decision [PML. No. 300/2016] of the Supreme Court, which, the Supreme Court rejected as inadmissible [Decision PN. II. No. 1/2017].

47. In the present case, the Applicant considers that Decision PML. No. 300/2016 of the Supreme Court of 12 December 2016, violated the right to fair trial because the Supreme Court did not consider her request for protection of legality against the judgment of the Court of Appeals PAKR. br. 398/2016, with the reasoning that, *“from the challenged Judgments, it follows that the defence counsel of the convict Emine Rama - Simnica, in the all stages of the criminal procedure was the lawyer Abit Asllani from Prishtina, who submitted the appeal against the Judgment of the first instance. The request for protection of legality was submitted by the lawyer Teuta Zhinipotoku from Prishtina while the case file does not contain any evidence that the defense counsel in question was authorized to use this legal remedy.”*
48. Such a stand of the Supreme Court, in the Applicant's view, is contrary to the obligations of the court provided by Article 442.4 of the CPCK, which prevented her to continue with further proceedings and by this was caused a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The Court states that in essence the Applicant alleges a violation of the right of access to the court, as the Supreme Court rejected her appeal without entering the substance of the request.
49. Accordingly, the Court will consider the Applicant's allegations regarding the right of 'access to court' as one of the principles of a fair trial under Article 31 of the Constitution and Article 6 of the ECHR.

General principles (Access to the court)

50. First of all, the Court recalls that in the case *Golder v. United Kingdom*, in paragraph 36, the ECtHR found that: *“36. (...) the right of access constitutes an element which is inherent in the right stated by Article 6 para. 1. Article 6 para. 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only. (see Case Golder v. the United Kingdom, 21 February, 1975, §§ 28-36, Series A No. 18)*
51. Therefore, the ECtHR, by its legal interpretation of Article 6 of the ECHR has taken the “right of access to a court” as a principle not defined by that provision, but according to the ECtHR understanding, it is implicitly contained in the provision itself.
52. Furthermore, in the case *Kreuz v. Poland*, the ECtHR stated *“The Court reiterates that, as it has held on many occasions, Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the “right to a court”, the right of access, as a principle that makes in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6. (see ECtHR judgment: Kreuz v. Poland, Application No. 2824/95 of 20 April 1998 § 52)*

53. Also in the judgment *Lesjak v. Croatia* (2010), the European Court reiterated what constitutes a definitive access to a court or a right of access to a court: “35. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. The right of access, namely the right to institute proceedings before a court in civil matters, constitutes one aspect of this “right to a court” (see, notably, *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act interfering with his or her rights (...)(...) (see ECtHR judgment *Lesjak v. Croatia* application No. 25904/06 of 18 February 2010)
54. Furthermore, the Court recalls that the ECtHR has found that the right of access to court also applies in criminal cases (see ECtHR Judgment of 13 May 2001, *Krombach v France*, no. 29731/96, paragraph 96).
55. Therefore, in accordance with ECtHR case law, the right of access to a court means not only the right to initiate proceedings before a court, but, in order for the right of access to a court to be effective, the individual must also have a clear and real possibility of challenging the decision which violates his/her rights. In other words, the right of access to a court is not exhausted only in the right to institute proceedings before the court, but its meaning is much wider as it includes the right to “resolution” of the dispute by the competent court.
56. The Court further states the right of access to a court is not absolute, but it can be subject to limitations, since by its very nature it calls for regulation by the state, which enjoys a certain margin of appreciation in this regard.
57. The Court recalls the reasoning of the European Commission on Human Rights (Report of 05 April 1995, *Société Levages Prestations Services v. France* , no. 21920/93, paragraph 40): “[...] the Commission considers that the decision of the [Supreme Court] which led in this case to the inadmissibility the appeal on points of law, had disproportionate and inequitable repercussions on the applicant's right of access to a court of and has denied [him] in practice the possibility of exercising the remedy that was open to him in [domestic] law.”
58. In other words, any limitations on the right of access to a court must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the “right to a court” is impaired. Such limitations will not be compatible if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see cases: *Sotiris and Nikos Koutras, ATTEE v. Greece* (2000), § 15; *Běleš and Others v. the Czech Republic* (2002), § 61).
59. Thus, based on the decisions of the European Commission on Human Rights and the ECtHR case law, the Court considers that the limitations will not comply with Article 6 para. 1. If: a) they do not pursue a legitimate aim; and b) if there is not a reasonable relationship of proportionality between the means employed and the aim sought (see European Court, *Stubbings and Others v United Kingdom*, judgment of 22 October 1996, Report of judgments and

decisions 1996 - IV, paragraph 50; and, *mutatis mutandis*, *Lončar v. Bosnia and Herzegovina*, Application No. 15835/08, judgment of 25 February 1996 2014, paragraph 37).

Application of these principles and guarantees in the present case

60. The Court notes that the Applicant in the present case had access to the courts, as well as to the Supreme Court, but only until the moment of filing the request for protection of legality against the judgment of the Court of Appeals.
61. However, the mere fact that the Applicant had the legal possibility to file this request with the Supreme Court does not necessarily lead by itself to the fulfillment of the right of access to a court arising from Article 31 of the Constitution and Article 6 of the ECHR. Therefore, it remains to be determined whether the decision of the Supreme Court rejecting the Applicant's request for protection of legality on the grounds that her legal representative was not authorized, without prior verification, effectively denied the Applicant "the right of access to a court" from the standpoint of the principle of the rule of law in a democratic society, as well as the guarantees provided by Article 31 of the Constitution and Article 6 of the ECHR.
62. In this respect, the Court emphasizes that "the right to appeal" is not defined or implied in Article 6 of the ECHR, but if the appeal was allowed by law and if it was filed, and the court in that case, in this case the Supreme Court, was informed about this, and it was called upon to determine the facts that are essential to the continuation of proceedings in a procedural sense, then according to the ECtHR case law, the first paragraph of Article 6 of the ECHR is applicable (see ECtHR *Delcourt v. Belgium*, of 17 January 1970, Series A p.11-14).
63. The Court notes that the main reason for the rejection of the Applicant's appeal by the Supreme Court is that the Applicant had a representative before the Basic Court and the Court of Appeals, while the request for protection of legality before the Supreme Court was submitted by another representative for whom, according to the Supreme Court, there was no power of attorney in the case file.
64. In that regard, the Court notes that according to case law of the ECtHR, a principle of a fair trial implies the right of the party to defend himself in person or through a representative, chosen by him and that this right is closely linked to the right to a fair trial (see ECtHR Judgment of 25 April 1983 *Pakelli v. Germany*, No. 64, paragraph 31).
65. In that regard, the Court notes that the Applicant's representative on 28 December 2016 filed again a request with the Supreme Court in which she submitted the challenged power of attorney and stated "*if the Supreme Court has any doubts or ambiguities regarding the status of the Applicant's representative and the first request for the protection of legality, it should have, pursuant to Article 442 para. 4 of the CPCK, sought clarification or supplement of the Applicant's request within a certain deadline.* "

66. The Court recalls that Article 442.4 of the CPCCK provides that:

[...]

4. Unless otherwise provided for in the present Code, when a submission has been filed which is incomprehensible or does not contain everything necessary for it to be acted upon, the court shall summon the person making the submission to correct or supplement the submission; and if he or she does not do so within a specified period of time, the court shall reject the submission.

67. However, the Court notes that responding to the Applicant's request of 28 December 2016, the Supreme Court in Decision [PN. II. No. 1/2017] of 31 January 2017 stated:

"The provisions of Article 418 of the CPCCK, define decisively the cases when the extraordinary legal remedies can be applied against final decisions, while in the present case the defense counsel of the convict submitted a request for annulling the Decision and issuing a Decision based on merit upon the request for protection of legality against the Decision of the Supreme Court of Kosovo, the request cannot be considered as an extraordinary legal remedy; therefore, as such, this Court considers that it should be dismissed as inadmissible."

68. In this regard, the Court notes that in its Decision [PN. II. No. 1/2017] of 30 January 2017, the Supreme Court did not take into account the Applicant's request for annulment of the Supreme Court's decision of 12 December 2016, but merely dealt with the procedural question, *whether the Applicant's request of 28 December 2016, is in accordance with the relevant legal provisions*, namely whether the Applicant had the right to use the request for annulment of the Supreme Court's decision of 12 December 2016 as an extraordinary legal remedy.

69. However, the Court notes that the very substance of the Applicant's request for the annulment of the Decision of the Supreme Court of 12 December 2016, related to the fact that the Supreme Court rejected the request for protection of legality without previously summoning the Applicant to correct or supplement the submission as required by the legal provision of Article 442.4 of the CPCCK, *the court shall summon the person making the submission to correct or supplement the submission; and if he or she does not do so within a specified period of time, the court shall reject the submission.*

70. The Court recalls that the Applicant explicitly claims that, pursuant to Article 442.4 of the CPCCK, the Supreme Court had to request the supplement and clarification of her submissions, and not to summarily reject the appeal by Decision [PML. No. 300/2016] without a previous determination of procedural requirements that would allow for consideration the essence of the request for protection of legality.

71. In this regard, the Court considers that Article 442.4 of the CPCCK is neither vague nor ambiguous as to the procedural steps that the Supreme Court should

take. On the contrary, Article 442.4 of the CPCK clearly and directly states what procedural steps the Supreme Court should take in relation to the Applicant's appeal, as well as what actions the party must take within the prescribed time limit.

72. However, the Supreme Court rendered a decision summarily rejecting the Applicant's request on procedural grounds without allowing the Applicant to clarify the identity of her legal representative. Thereby, the Supreme Court restricted the Applicant's access to court.
73. The Court considers that the Supreme Court has the right to render a decision, in accordance with its jurisdiction, but only after the Applicant, in accordance with the applicable provision of Article 442.4 of the CPCK, is given the opportunity to remove in due course all the doubts and uncertainties that the Supreme Court had in relation to the status of her legal representative.
74. Moreover, the Court notes that the Supreme Court in its second decision did not give any explanation as to the reasons for not applying Article 442.4 of the CPCK, and why her right of access to the court was limited to such an extent that it prevented her completely to pursue the remedy of protection of legality.
75. Such limitations of the Supreme Court could not lead to a legitimate aim that would allow for a decision on merits to be rendered in the present case, by which results that there is no reasonable relationship of proportionality between the means used by the Supreme Court and the aim pursued, which would lead to a final decision on the dispute of the case.
76. The Court considers that in such circumstances the Applicant has been deprived of her right of access to a court as a principle of a fair and impartial trial pursuant to Article 31 of the Constitution and Article 6 of the ECHR.
77. Therefore, the Court finds that there has been a violation of Article 31 (1) of the Constitution, in conjunction with Article 6 (1) of the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law, and Rule 56.1 of the Rules of Procedure, in the session held on 29 May 2018, by majority

DECIDES

- I. TO DECLARE the Referral admissible for consideration in merits;
- II. TO HOLD that the Decision of the Supreme Court [PML. No. 300/2016] of 12 December 2016, is in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights;
- III. TO DECLARE INVALID the Decision of the Supreme Court [PML. No. 300/2016] of 12 December 2016, in conjunction with the Decision of the Supreme Court [PN. II. No. 1/2017] of 30 January 2017;
- IV. TO REMAND the case to the Supreme Court for reconsideration in conformity with the Judgment of this Court;
- V. TO ORDER the Supreme Court to inform the Court, in accordance with Rule 63 (5) of the Rules of Procedure, about the measures taken to enforce the Judgment of the Court;
- VI. TO REMAIN seized of the matter pending compliance with that order;
- VII. TO NOTIFY this Decision to the Parties;
- VIII. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IX. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Selvete Gërxhaliu-Krasniqi



President of the Constitutional Court

Arta Rama-Hajrizi