



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO



Newsletter

January — June 2018

CONTENT:

SIX MONTHS WORKING REPORT.....2

ACTIVITIES OF THE CONSTITUTIONAL COURT.....5

EXPERIENCES AND PERSONAL PRACTICES.....11

ECtHR – IMPORTANT DECISIONS13

JUDGMENTS.....17



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 served for a non-renewable term of 9 (nine) years.

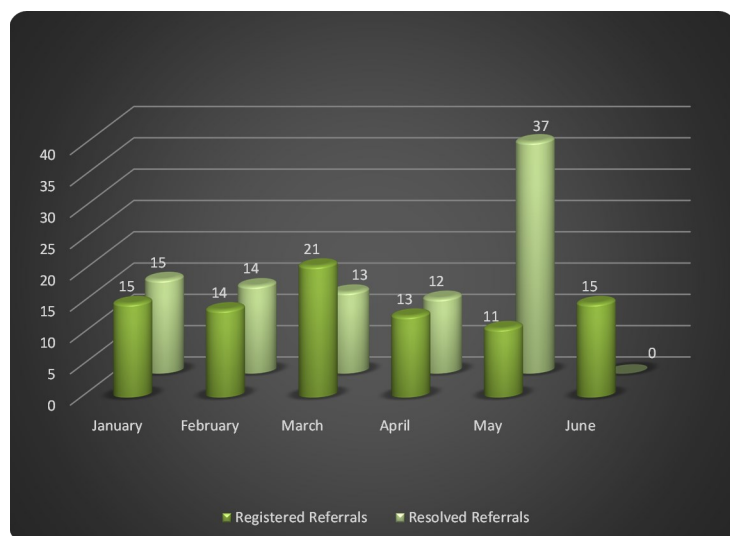
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

Status of cases

During the six-month period: 1 January – 30 June 2018, the Court has processed a total of 182 Referrals/ Cases. A total of 91 Referrals were decided or 50 % of all available cases.

During this period, 95 decisions and 2 dissenting opinions were published on the Court's webpage .

*The dynamics of received referrals by month
(1 January - 30 June 2018)*



The following are 9 judgments that the Court rendered during the six month period, 1 January - 30 June 2018:

- Judgment in Case KI 122/16, submitted by: Riza Dembogaj. The filed referral requested the constitutional review of Decision CML. No. 6/2016 of the Supreme Court of the Republic of Kosovo, of 13 September 2016 .
- Judgment in Case KI 115/16, submitted by: Branko Ljumovic, Ranko Ljumovic dhe Anica Vukicevic-Ljumovic. The filed referral requested the constitutional review of Judgment AC-II-12-0126 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 21 April 2016 .
- Judgment in Case KI 62/17, submitted by: Emine Simnica. The filed referral requested the 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 .
- Judgment in Case KI 69/16, submitted by: Nora Dukagjini-Saliu. The filed referral requested the

of Judgment Rev. No. 295/2015 of the Supreme Court of Kosovo, of 9 December 2015 .

- Judgment in Case KO 12/18, submitted by: Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of the Decision of the Government of the Republic of Kosovo, no. 04/20, of 20 December 2017 .
- Judgment in Cases KI 146/17, KI 147/17, KI 148/17, KI 149/17 and KI 150/17, submitted by: Isni Thaçi, Zeqir Demaku, Fadil Demaku, Nexhat Demaku and Jahir Demaku. The filed referral requested the constitutional review of Judgment PML. KZZ. No. 322/2016 of the Supreme Court of Kosovo, of 19 July 2017 .
- Judgment in Case KO 45/18, submitted by: Glauk Konjufca and 11 other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Law No. 06/L-060 on Ratification of the Agreement on the State Border between the Republic of Kosovo and Montenegro.
- Judgment in Case KI 122/17, submitted by: Ceska Exportni Banka A.S. The filed referral requested the constitutional review of Decision Ae. No. 185/2017 of the Court of Appeals, of 11 August 2017, and Decision IV. EK. C. No. 273/2016 of the Basic Court in Prishtina, of 14 June 2017.
- Judgment in Case KI 97/16, submitted by: "IKK Classic". The filed referral requested the constitutional review of Judgment E. Rev. 15/2016 of the Supreme Court of Kosovo, of 16 March 2016.

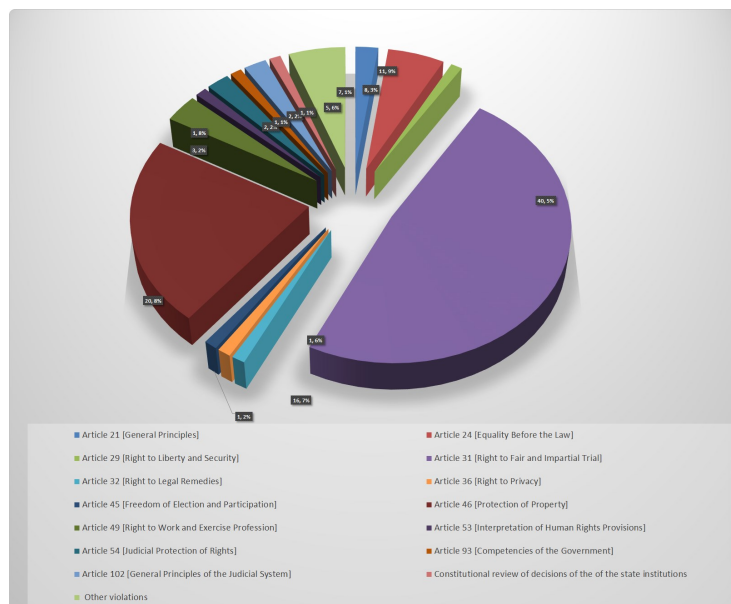
Types of alleged violations

The types of alleged violations in the 89 referrals received during the six-month period: 1 January - 30 June 2018, are the following:

- Article 21 [General Principles], 2 cases or 2.2%;
- Article 24 [Equality Before the Law], 5 cases or 5.6%;
- Article 29 [Right to Liberty and Security], 1 case or 1.1%;
- Article 31 [Right to Fair and Impartial Trial], 43 cases or 48.4%;
- Article 32 [Right to Legal Remedies], 1 case or 1.1%; 16.7%;

- Article 36 [Right to Privacy], 1 case or 1.1%;
- Article 45 [Freedom of Election and Participation], 1 case or 1.1%;
- Article 46 [Protection of Property], 20 cases or 22.5%;
- Article 49 [Right to Work and Exercise Profession], 3 cases or 3.4%;
- Article 53 [Interpretation of Human Rights Provisions], 1 case or 1.1%;
- Article 54 [Judicial Protection of Rights], 2 cases or 2.2%;
- Article 93 [Competencies of the Government], 1 case or 1.1%;
- Article 102 [General Principles of the Judicial System], 2 cases or 2.2%;
- Constitutional review of decisions of the state institutions, 1 case or 1.1%;
- Other violations, 5 cases or 5.6%;

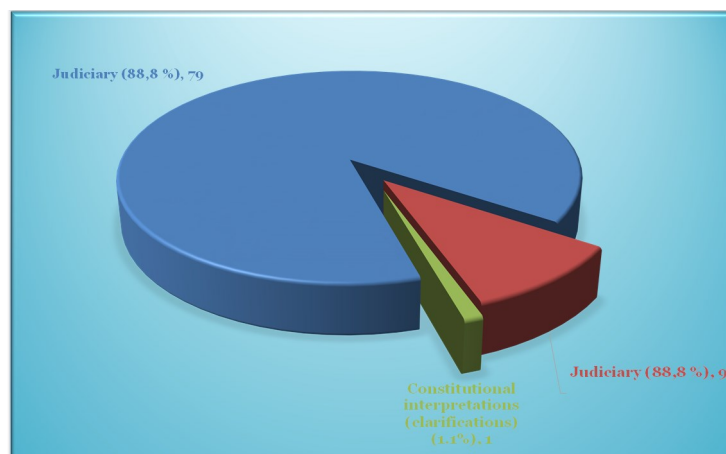
*Alleged violations by type
(1 January - 30 June 2018)*



Alleged violators of rights

- 79 or 88,8 % of Referrals refers to violations allegedly committed by court's decisions
- 9 or 10,1 % of Referrals refers to violations allegedly committed by other public authorities
- 1 or 1,1 % of Referrals refers to constitutional interpretations or clarifications

*Alleged violators of rights
(1 January - 30 June 2018)*

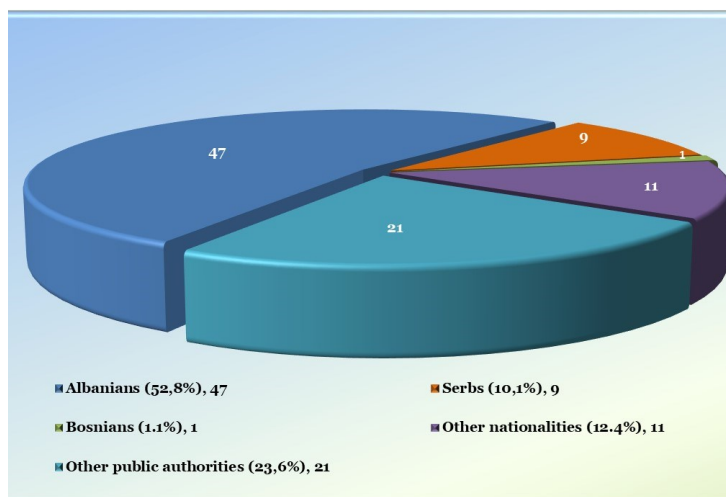


Access to the Court

The access of individuals to the Court is the following:

- 47 Referrals were filed by Albanians, or 52,8%;
- 9 Referrals were filed by Serbs, or 10,1%;
- 1 Referral was filed by Bosnians, or 1,1%;
- 11 Referrals were filed by other communities, or 12,4%;
- 21 Referrals were filed by other public authorities (legal persons), or 23,6%;

*Ethnic structure of the Applicants
(1 January - 30 June 2018)*



Sessions and Review Panels

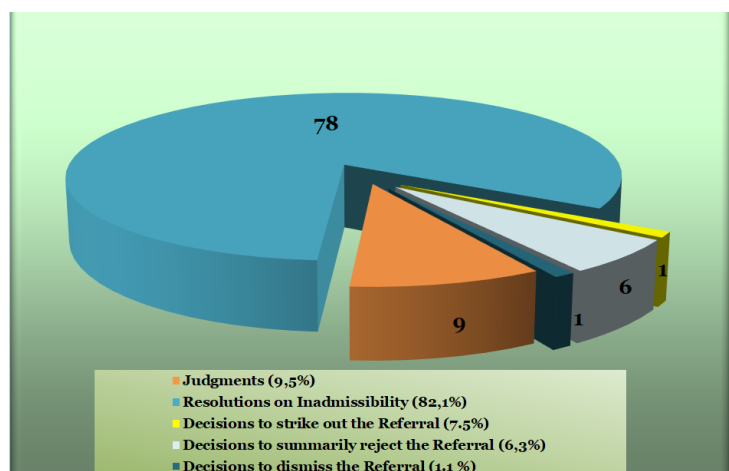
During the six-month period: 1 January - 30 June 2018, the Constitutional Court held 24 plenary sessions and 83 Review Panels in which the cases were resolved by decisions, resolutions and judgments.

During this six-month period, the Constitutional Court has published 95 decisions.

The structure of the published decisions is the following:

- 9 Judgments (9,5%)
- 78 Resolutions on Inadmissibility (82,1%)
- 6 Decisions to summarily reject the Referral (6,3%)
- 1 Decision to dismissal the Referral (1,1%)
- 1 Decision to strike out the Referral (1,1%)

*Structure of decisions
(1 January - 30 June 2018)*



16 January 2018



The Constitutional Court of the Republic of Kosovo in co-operation with USAID Justice System Strengthening Program in Kosovo (JSSP), marked with a solemn ceremony launching of the new website of the Court, which was held at “Square 21” in Prishtina. With an occasional speech, the President of the Constitutional Court of Kosovo, Mrs. Arta Rama-Hajrizi, and Director of the USAID Mission in Kosovo, Mr. James Hope, addressed the participants of this ceremony.

In her speech dedicated to launching of the new website of the Court, President Rama-Hajrizi, inter alia said: *“The design of the new website is conceived by taking the features and qualities of the most modern websites of the justice institutions in the world, where it is particularly worth mentioning the new opportunity for advanced search of the Court’s decisions. I believe that from now on the new website will further approximate the public and the media with the decisions and work of the Constitutional Court”*.

With the help of the new website, which represents a serious attempt of the Court to increase the level of its transparency as well as the quality of communication with the public, all citizens of the Republic of Kosovo, and in particular the representatives of the judiciary, lawyers and other members of the legal community, will now have new and far more practical opportunities for advanced search and research of the Court’s decisions.

Advanced search is made possible by the database of decisions on the website, which is partially designed according to the example of the website of the European Court of Human Rights seated in Strasbourg. The advanced search option is also designed in other sections of the website, in addition to the possibility of direct subscription to bulletins of case law, newsletters and recent decisions published by the Court. The development of the new website was funded entirely by the USAID Justice System Strengthening Program, one of the most important donors and partners of the Constitutional Court since its establishment. The new website of the Constitutional Court was presented by the Director of Communication and Information Office and also the chairman of the Website Development Working

Group, Mr. Veton Dula, as well as the Legal Adviser of the Court and one of the members of the Website Development Working Group, Mr. Jeton Bytyqi.

2 February 2018



The Secretary General of the Constitutional Court of the Republic of Kosovo, Mr. Milot Vokshi, received in a meeting the newly appointed General Secretary of the Constitutional Court of the Republic of Albania, Mr. Eugen Papandile.

At the joint meeting, the two secretaries discussed important issues regarding the particularities and differences in the organization of work in the administration of the two constitutional courts, the challenges that these institutions face as well as the efforts for further reforms in order to increase efficiency and transparency at work.

After having assessed the bilateral inter-institutional relations as very good, Secretary Vokshi and his counterpart Papandile expressed readiness for further deepening of mutual cooperation through exchange of experiences, organization of study visits and joint workshops, in order to enhance the professional capacities and adoption of the contemporary standards of administration by both courts.

Secretary Papandile, who was accompanied in the visit also by the Legal Advisor to the Constitutional Court of Albania, Mr. Ermal Tauzi, held separate meetings as well with the directors of various departments of the administration and the legal advisors of the Constitutional Court of Kosovo.

7 March 2018

A delegation of the Constitutional Court of the Republic of Kosovo, composed of the Vice President of the Court, Ivan Čukalović, Judge Altay Suroy and the Chief Legal Advisor of the Court, Sevdail Kastrati, stayed for an official visit in Ankara.

The visit of the delegation of the Constitutional Court of the Republic of Kosovo took place at the invitation of the Court of Cassation of Turkey, to attend the celebration of the 150th anniversary of the establishment of this court. In the framework of the



planned activities on the occasion of marking the jubilee anniversary of the Court of Cassation of Turkey, the delegation of the Constitutional Court of the Republic of Kosovo also attended the International Symposium on: *"The Role of the Court of Cassation in the Judicial System of Turkey"*.

During the stay in Ankara, Vice President Čukalović and Judge Suroy were received in a separate meeting by the President of the Court of Cassation of Turkey, Mr. İsmail Rüştü Cirit.

9 March 2018



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, accompanied by the Judges of the Constitutional Court, Mr. Almiro Rodrigues and Mrs. Selvete Gërxhaliu-Krasniqi, and the Secretary General of the Court, Mr. Milot Vokshi, stayed for an official visit in Zagreb. During the visit made at the invitation of the Constitutional Court of the Republic of Croatia, President Rama-Hajrizi and the delegation of the Constitutional Court of Kosovo held separate meetings with their Croatian counterparts.

During the conversation with the President of the Constitutional Court of Croatia, Mr. Miroslav Šeparović, President Rama-Hajrizi emphasized the progress and achievements made so far in the constitutional judiciary of Kosovo, and in complying with the jurisprudence of the European Court of Human Rights.

President Rama-Hajrizi further highlighted the importance and necessity of the support of the

Constitutional Court of Croatia in the efforts of the Constitutional Court of Kosovo for membership to different international organizations and forums of constitutional courts. During the course of the meeting, both Presidents exchanged their views on challenges faced by the Constitutional Courts of both countries, and for the need to strengthen the independence of the judicial system in terms of a more efficient rule of law. During the stay in Zagreb, President Arta Rama-Hajrizi and the delegation of the Constitutional Court of Kosovo were also received in a meeting by the Speaker of the Parliament of the Republic of Croatia, Mr. Goran Jandroković.

16 March 2018



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in an introductory meeting the new Ambassador of Finland to Kosovo, Ms. Pia Stjernvall.

In this meeting was discussed, among others, about the work of the Constitutional Court done so far, enhanced efficiency in reviewing cases, increased transparency of the work, and about the importance of further consolidation of constitutional judiciary in the country.

President Rama-Hajrizi highlighted very good relations and mutual cooperation with the counterpart courts in the region and beyond, and continuous efforts being made to unify the case law in accordance with the jurisprudence of the European Court of Human Rights.

She expressed her appreciation for the continuous contribution that Finland has provided to the institutions of the country, and in particular to the Constitutional Court, whereupon she expressed her firm conviction that the good relations between the two states will help our country to easier overcome challenges arising in the framework of the European integration processes.

Ambassador Stjernvall reconfirmed the continuation of support of the Finnish Government to the institutions of Kosovo, considering further progress in the rule of law and respecting human rights in the country as a priority.



20 March 2018

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, and the judge of the Constitutional Court, Mrs. Gresa Caka-Nimani, participated in the roundtable held on the topic: *“The challenges and opportunities in the rule of law”*, organized in Prishtina by the USAID Mission in Kosovo. Kosovo judicial system, current situation and the way forward, opportunities and challenges of involving women in the judiciary were among the main topics that were addressed in this discussion. President Rama-Hajrizi and judge Caka-Nimani presented before the participants in the roundtable, among whom were also the Deputy Assistant Administrator of USAID for Europe and Asia, Ms. Gretchen Birkle, and the Director of USAID Mission in Kosovo, Mr. James Hope, their views regarding key challenges in the constitutional justice in Kosovo, as well as opportunities for a more active involvement of women in the judicial system in the country. Following the discussion, President Rama-Hajrizi held a separate meeting with Ms. Birkle and, after thanking for the assistance that the USAID has provided to the Constitutional Court of Kosovo so far, they discussed more broadly about the work of the institution, current challenges in the renewal of the composition of the judges and about the possibilities of implementing joint projects in support of the professional capacity building of the Court.



5 April 2018

A group of students of the Faculty of Law of the University of Prishtina “Hasan Prishtina”, visited the Constitutional Court of the Republic of Kosovo. The students were received in a meeting by the Chief Legal Advisor of the Constitutional Court, Mr. Sevdail Kastrati, and the Junior Legal Advisor, Ms. Anita Çavdarbasha. During the meeting, advisor Kastrati informed the students about the manner of functioning and powers of the Constitutional Court in the framework of the Kosovo state system, the method of election of judges of the Court and the deliberation process. He provided a more detailed explanation with



regard to the implementation of the jurisprudence of the European Court of Human Rights in the constitutional system of Kosovo, and the authorized parties for submission of Referrals to the Constitutional Court. Meanwhile advisor Çavdarbasha informed the students about the stages of proceedings and review of referrals filed with the Court, providing at the same time general statistics regarding the number of reviewed referrals and ethnicity of applicants. The students expressed their interest about the relation of the Constitutional Court with the courts of other instances in the country, admissibility requirements of referrals, and the time limits for review of referrals.

10 April 2018



At the invitation of the “AAB” College and the Institution for Constitutional and Parliamentary Studies “ISKIP”, the President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, participated in the roundtable on the topic *“10 years of the Constitution”*, which was held in Prishtina. At the roundtable organized in the “AAB” College on the occasion of the 10th anniversary of the adoption of the Constitution of the Republic of Kosovo, President Rama-Hajrizi delivered a presentation on the topic: *“The experience of the Constitutional Court – The road to success”*. During the presentation, President Rama-Hajrizi spoke, among other, about the importance of drafting the new Constitution of Kosovo, the circumstances in which it was adopted, and the opportunities it has created for the establishment of new institutions, including the Constitutional Court of Kosovo. President Rama-Hajrizi also discussed the work of the Constitutional Court to date, the challenges it has overcome after the establishment, highlighting at the same time some of its most important decisions. At the end of the speech, she expressed her commitment that the Constitutional Court and its judges will continue their work devoted to the protection of Constitution and constitutionality in the country.



10 April 2018



A group of students selected from primary schools in different cities of the Republic of Kosovo visited the Constitutional Court. The students were welcomed by the President of the Constitutional Court, Mrs. Arta Rama-Hajrizi, who initially made a brief presentation on the history of drafting the new Constitution of the Republic of Kosovo and the importance of this document for the protection of human rights and fundamental freedoms in the country. President Rama-Hajrizi further informed the students about the function she has and the work of the Constitutional Court, its composition and the manner of election of judges, as well as about the active role this Court has in the protection of constitutionality in the country.

At the end of the meeting President Rama-Hajrizi gave the students a copy of the Constitution of the Republic of Kosovo, with the wish that by preserving and respecting it we will build all together an even better future for our country. The visit of students was conducted under the joint organization of the Constitutional Court of Kosovo and Transformational Leadership Program (TLP) of the US Agency for International Development (USAID), on the occasion of marking the 10th anniversary of the adoption of the Constitution of Kosovo.

11 April 2018

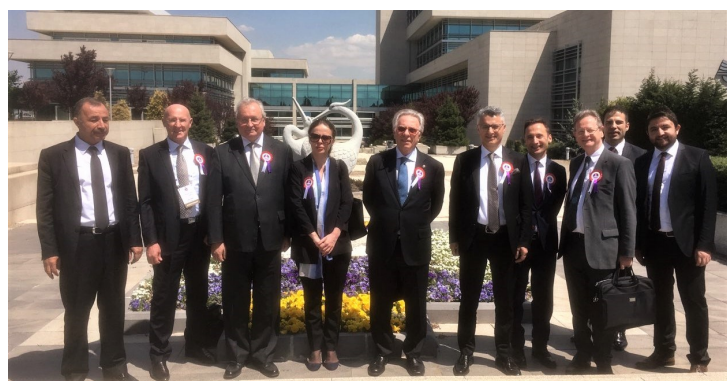


The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, attended the ceremony celebrating the 10th Anniversary of the adoption of the Constitution of Kosovo which was

organized by the Ministry of Justice of the Government of the Republic of Kosovo on 10 April 2018, in Prishtina. She addressed the participants to this ceremony with an occasional speech.

26 April 2018

At the invitation of the Constitutional Court of the Republic of Turkey, a delegation of the Constitutional Court of the Republic of Kosovo, composed of Judge Altay Suroy and Judge Gresa Caka-Nimani, traveled to Ankara. The delegation of the Constitutional Court of Kosovo participated in the ceremony of celebration of the 56th anniversary of the establishment of the Constitutional Court of Turkey as well as in the international conference organized on this occasion on the topic: *"Evaluation of the first five years of individual application"*, which was held in the Turkish capital on 25 and 26 April 2018. During the stay in



Ankara, in addition to participating in the anniversary of the establishment of the Constitutional Court of Turkey, judges Suroy and Caka-Nimani also met with the President of the Constitutional Court of Turkey, Zühtü Arslan, and with the Deputy President of this Court, Mr. Burhan Üstün.

The relations between the two constitutional courts, as well as the possibilities for further deepening of mutual cooperation, were among the topics discussed at the joint meeting.

3 May 2018

The Constitutional Court of the Republic of Kosovo was visited by the students of the Faculty of Law of "Isa Boletini" University in Mitrovica. The students were received in the meeting by the Chief Legal Advisor of the Constitutional Court, Mr. Sevdail Kastrati, and Legal Advisor, Ms. Arbana Beqiri-Plakolli.

The function and the role of the Court under the Constitution, its internal organization, the manner of handling cases, the composition and procedure of selection of judges, as well as the relationship with the courts of other levels in the country, were some of the topics which advisor Kastrati discussed with the students of the University of Mitrovica.

With regard to the authorized parties to address the Constitutional Court, the stages of processing the

submitted referrals, the ethnic structure of the Applicants and the implementation of the case law of the European Court of Human Rights during the examination of cases, the students were informed more thoroughly by the advisor Beqiri- Plakolli.

During the conversation, the students also expressed their interest in the right of the Constitutional Court to initiate cases, the right of the parties to the defense counsel, the deadlines and duration of the case review, and the requirements foreseen for the admissibility of Referrals.

10 May 2018



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi received in a meeting the Ambassador of Norway to Kosovo, Mr. Per Strand Sjaastad.

The work of the Constitutional Court so far and the challenges it currently faces were among the topics of which President Rama-Hajrizi informed Ambassador Sjaastad. The topics of the meeting included as well the advancement of local legislation towards the protection of human rights, effective implementation of the decisions of the Constitutional Court, the ending of the mandate of some of the Judges of the Constitutional Court and the necessity of appointing new judges. President Rama-Hajrizi thanked Ambassador Sjaastad for the aid that Norway has provided to the Constitutional Court of Kosovo to this day in professional capacity building and implementation of various projects in the field of constitutional justice. Ambassador Sjaastad stated that the Government of the Country he represents is committed to further supporting the independent work of the Constitutional Court.

4 June 2018

The Constitutional Court of the Republic of Kosovo in

in cooperation with the Academy of Justice of the Republic of Kosovo organized a joint workshop on *“The role and competences of the Constitutional Court. Relationship with regular courts and other institutions”*, which was held at the Courtroom of the Constitutional Court. The purpose of the workshop was to inform the newly appointed prosecutors of the Republic of Kosovo about the role and competencies of the Constitutional Court in relation to the regular judiciary, as well about other institutions in the country, for which they were informed more closely by the Chief Legal Advisor of the Court, Sevdail Kastrati.

Advisor Kastrati informed the new prosecutors about the receipt and processing of the referrals submitted by the parties, the admissibility requirements of the referrals as well as individual complaints against the decisions of the regular courts, and in particular of the Supreme Court of Kosovo. The new prosecutors expressed their interest to being informed into more details regarding the review of complaints by the Constitutional Court related to the length of the court proceedings by the regular courts, the time limits for the review of referrals, as well as the process of reviewing the cases based of the order of their submission/registration. Regarding the cooperation relationship between the Constitutional Court of Kosovo and the Venice Commission, the new prosecutors were informed in more detail by the Director of the Communication and Information Office, Veton Dula, who is also the liaison officer of the Constitutional Court with the Venice Commission.



13 June 2018

On the occasion of the end of the mandate of the four judges of the Constitutional Court: Deputy President Ivan Cukalovic, judge Altay Suroy Rodrigues and of the international judges Almiro Rodrigues and Snezhana Botusharova, a farewell ceremony organized by the Constitutional Court of Kosovo was held in Prishtina.

In the occasional speech held in the presence of the highest institutional representatives, the judiciary and the international representatives in the country, the President of the Constitutional Court, Mrs. Arta Rama-Hajrizi, expressed her gratitude and appreciation for the extraordinary contribution that judges Rodrigues, Botusharova, Cukalovic and Suroy have given for the establishment of the foundations of the constitutional judiciary in the Republic of Kosovo. *“With the end of the mandate of the four judges of the Constitutional*

Court and the constitutional judiciary of Kosovo in general are losing four judges and extraordinary experts of the field. Replacing judges with such professional qualities and with such a long experience in the field of the constitutional law, there is no doubt that will be a very challenging and difficult process for all of us,” said President Rama-Hajrizi in the speech.



For their contribution to the establishment and professional advancement of the Constitutional Court of the Republic of Kosovo during their nine year mandate, the international judges of the Constitutional Court, Mr. Almiro Rodrigues and Ms. Snezhana Botusharova, have been decorated by the President of the Republic of Kosovo, Mr. Hashim Thaci, with the Presidential Jubilee Medal of the 10th Anniversary of Independence, at a solemn ceremony held in the Office of the President on 8 June 2018. With the Presidential Jubilee Medal of the 10th Anniversary of Independence, President Thaçi also decorated the former international judge of the Constitutional Court, Mr. Robert Carolan, who was a member of the Court until September 2016.





Anita G. Krasniqi

Traineeship programme at
the European Court of Human Rights
Strasbourg

It was my privilege and honour to undergo the Study Visit Program at the European Court of Human Rights, between 1 August and 31 December 2016, as part of the sixth group of officials from the Constitutional Court of Kosovo.

It was an experience that most jurists and lawyers of human rights aim and dream of in respect of their professional development and career growth. After having been registered as a trainee of the ECtHR, I have been assigned from the very first day to work at the Registry of the Court under the supervision of Stefano Piedimonte, Head of the Research Division and Ms. Genevieve Woods, Head of the Library.

Aside from other duties that I was assigned with during my traineeship, my daily activities included the following tasks:

- scan all the materials in the Library's Dossier Collection
- eliminate incorrect 'H' call numbers from records in the Library's Symphony database
- add book contents information to record in the Library's Symphony database
- overview the work of the Research and Library Division.

Besides my daily routine, I also had the opportunity to attend some of the Court's highly interesting induction courses and seminars, including the training session

on the HUDOC case-law database and on the Case Management and Working Methods. Furthermore, I had the chance to work for one day at the Court's Central Office and Archives, and have a closer insight on the procedures and working methods of this highly important department of the Court.

Lessons learned

Acquiring general knowledge on the European Convention on Human Rights and getting familiar with the daily activities and practices of the European Court of Human Rights, with respect to case management system and database usage, was a worthwhile experience of this traineeship.

The traineeship has also had a very positive impact in my personal work routine and management capabilities, which have changed and improved significantly after my return in Kosovo.

In addition, while working in close cooperation with my other colleagues from the Constitutional Court of Kosovo, we have already taken all the necessary steps to improve the methods of case-processing of the Court. And this is only the beginning of the significant changes and improvements that we aim to apply in our daily work, while always bearing in mind the best experiences and practice of the ECtHR.

In this regard, I would like to use this opportunity and express my personal gratitude to Mr. Stefano Piedimonte, Head of the Research Division and Ms. Genevieve Woods, Head of the Library of ECtHR, who have supported me in every stage of my traineeship in Strasbourg.

I would like to also thank the former President and the current President of the Constitutional Court of Kosovo, the Judges of the Constitutional Court of Kosovo, the Council of Europe Office in Pristina and the Swiss Government, whose generous support made it possible for me to undertake the traineeship programme at the ECtHR.



Veton Dula

Traineeship programme at
the European Court of Human Rights
Strasbourg

I had the pleasure and privilege to be part of the Study Visit Program at the European Court of Human Rights starting from 1 August until 31 December 2016, a valuable project organized with the support of the Council of Europe Office in Prishtina and funded by the Swiss Government.

As my other colleagues from the Constitutional Court of Kosovo who underwent this training program before me, I had the rare opportunity to witness and experience at first-hand the best working practices of an institution which represents the last and the foremost guardian of human rights not only in Europe. Having been assigned to the Press Unit of the ECHR, I was involved from the very first day in drafting summaries for certain press releases of the Court and summarizing the Court's decisions. I was also assigned with preparing Internal Press review, which was dedicated only for the Judges and members of the Registry of the Court, while referring to news sources from the media outlets around the world.

I had the opportunity to also witness and attend some of the high-profile hearings before the Grand Chamber of the Court, during which I also witnessed the process of media accreditation and public attendance in these hearings.

The website and the intranet of the Court was another interesting platform to interact with, including the advanced case-law search engine "Hudoc".

During my traineeship at the Court, I also had a frequent collaboration with the Web Unit team and attended regularly in the weekly meetings of the Press Unit.

Lessons learned

Aside from becoming familiar with the European Convention on Human Rights and acquiring general knowledge on the activities of the European Court of Human Rights, the study visit provided me with the unique opportunity to broaden my general knowledge on media and public relations. In addition to preparing press releases and summarizing (often complex) decisions of the Court, it was a very interesting experience to also witness a different approach of communicating with the public as well as using new tools of communication, which I certainly aim to put into practice in my daily work at the Constitutional Court of Kosovo.

The website of the ECHR is something which I believe that every other court or judicial institution in the world should refer to as an example of practical online communication tool, transparency and useful information displayed. I'm looking forward to apply some of the basic features of this website in the new and re-designed website of our Court in Kosovo. Participating in the weekly meetings with other members of the Press Unit of the ECHR was another valuable experience, in the sense of a real and sincere team-work and of the best managerial practices.

In this regard, I would like to especially thank for their continuous support and cooperation, Mr Patrick Titium, Head of the Press Unit and the ECHR President's Private Office and Ms Tracey Turner Tretz, Senior Press Officer, who made me feel as a true member of the Press Unit and without whom my traineeship at the ECHR would be meaningless. I would also like to express my appreciation for their collaboration and support in my daily activities to other members of the Press Unit: Ms Sylvie Ruffenach, Ms Lavinia Bucurenciu, Ms Tzvetomira Popova, Ms Inci Ertikin, Mr Denis Lambert and Mr George Stafford.

Lastly, I wish to express my gratitude to the former and the current President of the Constitutional Court of Kosovo, to the Judges of the Constitutional Court of Kosovo, to the Swiss Government and the Council of Europe Office in Pristina, whose efforts and generous support made it possible for me and my other colleagues in Kosovo to be part of the Study Visit Programme at the ECHR.

ECtHR – Important decisions (1 January – 30 June 2018)

* **Judgment concerning the application by the journalist Mehmet Hasan Altan, who was arrested and detained following the attempted military coup (20/03/2018)**

Following deliberations held on 20 February 2018 on the admissibility and merits of the case of Mehmet Hasan Altan v. Turkey (application no. 13237/17), the European Court of Human Rights held in its judgment: - by a majority (six votes to one), that there had been a **violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights; - by a majority (six votes to one), that there had been a **violation of Article 10 (freedom of expression)**; and - unanimously, that there had been **no violation of Article 5 § 4 (right to a speedy review of the lawfulness of detention)** on account of the alleged lack of a speedy judicial review by the Constitutional Court.

Under Article 5 § 1, the Court found in particular that Mr Altan's continued pre-trial detention, after the Constitutional Court's clear and unambiguous judgment of 11 January 2018 finding a violation of Article 19 § 3 of the Constitution, could not be regarded as "lawful" and "in accordance with a procedure prescribed by law" as required by the right to liberty and security. In that connection the Court observed, in particular, that the reasons given by the Istanbul 26th Assize Court in rejecting the application for Mr Altan's release, following a "final" and "binding" judgment delivered by the supreme constitutional judicial authority, could not be regarded as satisfying the requirements of Article 5 § 1 of the Convention. The Court held that for another court to call into question the powers conferred on a constitutional court to give final and binding judgments on individual applications ran counter to the fundamental principles of the rule of law and legal certainty, which were inherent in the protection afforded by Article 5 of the Convention and were the cornerstones of the guarantees against arbitrariness. The Court emphasised that Mr Altan's continued pre-trial detention, after the Constitutional Court's judgment, raised serious doubts as to the effectiveness of the remedy of an individual application to the Constitutional Court in cases concerning pre-trial detention. However, as matters stood, the Court did not intend to depart from its previous finding (Koçintar, § 442) that the right to lodge an individual application with the Constitutional Court constituted an effective remedy in respect of complaints by persons deprived of their liberty. Nevertheless, it reserved the right to examine the effectiveness of the system of individual applications to the Constitutional Court in cases brought under Article 5 of the Convention especially in view of any subsequent developments in the case-law of the first-instance

courts, in particular the assize courts, regarding the authority of the Constitutional Court's judgments.

Under Article 10, the Court held in particular that there was no reason to reach a different conclusion from that of the Constitutional Court, which had found that Mr Altan's initial and continued pre-trial detention, following his expression of his opinions, constituted a severe measure that could not be regarded as a necessary and proportionate interference in a democratic society. In that regard, the Court pointed out in particular that criticism of governments and publication of information regarded by a country's leaders as endangering national interests should not attract criminal charges for particularly serious offences such as belonging to or assisting a terrorist organisation, attempting to overthrow the government or the constitutional order or disseminating terrorist propaganda.

Regarding the complaint under Article 5 § 4 concerning the length of proceedings in the Constitutional Court (14 months and three days), the Court found that the situation in the present case was exceptional, especially on account of the complexity of the case and the Constitutional Court's current caseload. Lastly, the Court unanimously rejected the complaint concerning the lawfulness of the applicant's detention in police custody (Article 5 § 3) for failure to exhaust domestic remedies, and also the complaints concerning his lack of access to the investigation file (Article 5 § 4) and the right to compensation for unlawful detention (Article 5 § 5) as being manifestly ill-founded.

* **ECHR endorses German courts' decisions to take Twelve Tribes Church children into care because of caning (22/03/2018)**

In its judgments in the cases of *Tlapak and Others v. Germany* (nos. 11308/16 and 11344/16) and *Wetjen and Others v. Germany* (application nos. 68125/14 and 72204/14) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The cases concerned the partial withdrawal of parental authority and the taking into care of children belonging to the Twelve Tribes Church (Zwölf Stämme), living in two communities in Bavaria (Germany). In 2012 the press reported that church members punished their children by caning. The reports were subsequently corroborated by video footage of caning filmed with a hidden camera in one of the communities. Based on these press reports, as well as statements by former members of the church, the children living in the communities were taken into care in September 2013 by court order. The proceedings before the European Court have been brought by four families who are members of the Twelve Tribes Church. They complain about the German courts' partial withdrawal of their parental



authority and the splitting up of their families. The Court agreed with the German courts that the risk of systematic and regular caning of children justified withdrawing parts of the parents' authority and taking the children into care. Their decisions had been based on a risk of inhuman or degrading treatment, which is prohibited in absolute terms under the European Convention. The Court pointed out, moreover, that the German courts had given detailed reasons why they had had no other option available to them to protect the children. In particular, the parents had remained convinced during the proceedings that corporal punishment was acceptable and, even if they would have agreed to no caning, there had been no way of ensuring that it would not be carried out by other members of the community. Therefore, the German courts, in fair and reasonable proceedings in which each child's case had been looked at individually, had struck a balance between the interests of the parents and the best interests of the children.

*** Excessive length of criminal proceedings: the Court notes that a remedy exists in Romania, but that it became effective only after the application had been lodged (10/04/2018)**

In today's Chamber judgment in the case of *Brudan v. Romania* (application no. 75717/14) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 13 (right to an effective remedy)** of the European Convention on Human Rights, and a **violation of Article 6 § 1 (right to a fair trial within a reasonable time)**.

The case concerned the length of the criminal proceedings brought against the applicant, which began on 23 March 2000 and ended on 18 June 2014. The Court found in particular that, since its judgment in the case of *Vlad and Others v. Romania*, developments in the domestic case-law meant that an action for tortious liability had become an effective remedy in order to complain about the excessive length of proceedings before the criminal and civil courts in Romania. However, it considered that when the present application was lodged this remedy had not yet acquired a sufficient degree of legal certainty to constitute an effective remedy which had to be exhausted. The applicant could not therefore be faulted for not having used it. With regard to the length of the proceedings, the Court noted that, although part of the length of the proceedings was imputable to the postponements requested by the applicant and her lawyers, these could not justify the overall duration of the proceedings, which had lasted for more than 14 years. Such a length of proceedings could not be considered reasonable within the meaning of Article 6 of the Convention.

*** Refusal to register Bektashi Community by Macedonian courts (12/04/2018)**

In its judgment in the case of *Bektashi Community and Others v. "the former Yugoslav Republic of Macedonia"* (nos. 48044/10, 75722/12, and 25176/13) the European Court of Human Rights held that there had been: a **violation of Article 11 (freedom of assembly and association) read in the light of Article 9 (freedom of thought, conscience, and religion)** – in respect of the applicant association, and awarded 5,000 euros (EUR) (non-pecuniary damage) and EUR 2,000 (costs and expenses) to the applicant association.

The case concerned the complaint of Bektashi Community, a religious association, and two of its members, Mr E. Brahimaj, an Albanian national, and Mr A. Sulejmani, a Macedonian national, about the domestic courts' decisions refusing to recognise the association as a religious organisation or to register it anew. When new legislation entered into force in 2007, the domestic courts of FYROM had refused to allow the association to retain its status as a religious organisation and to accept its fresh application for registration. The applicant association operated as an officially recognised religious organisation from 1993. When new legislation on the legal status of churches, religious communities and groups entered into force in 2007, the association requested that the registration court recognise its continuing legal status. Its request was however refused on a formal ground, namely it had not been registered prior to 1998, but only listed in 2000. It then made a fresh application for registration under the new legislation, but in 2010 this request was also refused, mainly because the courts found that its name and doctrinal sources were identical to those of another already registered religious organisation and that this could create confusion among believers.

*** Terrorist's expulsion to Morocco was not in breach of Article 3 of the Convention (19/04/2018)**

In its judgment in the case of *A.S. v. France* (application no. 46240/15) the European Court of Human Rights held that there had been: unanimously, **no violation of Article 3 (prohibition of inhuman or degrading treatment)**, and by a majority, a **violation of Article 34 (right of individual application)** of the European Convention on Human Rights.

The case concerned the expulsion to Morocco of a Moroccan national who had been convicted in France of conspiracy to carry out terrorist acts, and who had previously been deprived of his French nationality for the same reason. The Court noted in particular that Morocco had adopted general measures to prevent risks of treatment contrary to Article 3. The present application was therefore different from the case of *M. A. v. France*. Furthermore, despite his release, the applicant had failed to provide any evidence that his conditions of detention had exceeded the requisite severity threshold for a violation of Article 3.

As regards Article 34, the Court found that the expulsion order had not been served on the applicant until 22 September 2015, the day of his release, more than one month after the decision had been taken, and that he had been immediately taken to the airport for expulsion to Morocco. The applicant had therefore not had sufficient time to request that the Court suspend the decision, even though the French authorities had taken it a long time previously.

*** Croatia has failed to regularise the residence status of a stateless migrant for many years, in breach of his right to private life (26/04/2018)**

In its judgment in the case of *Hoti v. Croatia* (application no. 63311/14) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 8 (right to respect for private and family life and the home)** of the European Convention on Human Rights.

The case concerned a migrant in Croatia who complained that he had been unable to regularise his residence status since his arrival in the country in 1979. His parents fled Albania in 1960 as political refugees and settled in Kosovo; he was born there a few years later. He has since been told by the Albanian authorities that he is not Albanian; according to his birth certificate, he has no nationality. He has been living and intermittently working in Croatia for almost 40 years and has no link with any other country as he has, in the meantime, lost contact with all his relatives. Currently unemployed because he has no residence status, he survives by carrying out occasional work on farms. The Court found in particular that the Croatian authorities had not taken into account the complexity of Mr Hoti's situation in the various procedures he had tried to use to regularise his residence status. He had therefore found himself, aged 55, in a precarious situation, with little prospect of finding employment or securing health insurance or pension rights. Indeed, instead of helping Mr Hoti to contact the authorities of another country in view of the fact that he has no nationality, the Croatian authorities have insisted on his being a Kosovo national.

*** Not all of critical comments in Chechnya newsletter articles warranted rights interference (09/05/2018)**

In its judgment in the case of *Stomakhin v. Russia* (application no. 52273/07) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned Mr Stomakhin's conviction and sentence to five years in jail for newsletter articles he had written on the armed conflict in Chechnya, which the domestic courts said had justified terrorism and violence and incited hatred. The Court found that some of the articles had gone beyond the bounds of

acceptable criticism and had amounted to calls for violence and the justification of terrorism. Other statements, however, had been within acceptable limits of criticism. Overall, there had not been a pressing social need to interfere with Mr Stomakhin's rights by penalising him for some of his comments and the harshness of the penalty had violated his rights. The Court urged governments to be cautious when considering what was hate speech and what was criticism of the authorities.

*** Macedonian courts failed to scrutinise whether an expulsion order was issued on genuine national security grounds (17/05/2018)**

In its judgment in the case of *Ljati v. "the former Yugoslav Republic of Macedonia"* (application no. 19017/16) the European Court of Human Rights held, by six votes to one, that there had been: a **violation of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens)** to the European Convention on Human Rights.

The case concerned a complaint brought by a Serbian national, who had been living in "the former Republic of Macedonia" from the age of eight, that she had been ordered to leave the country because she was a risk to national security and that she was thus under an imminent threat of forcible expulsion at any time. The Court found that the domestic courts had failed to subject the executive's assertion that the applicant posed a risk to national security to any meaningful scrutiny. In particular they had based their decision on a classified document which had never been available either to them or to the applicant. Even though the Government had provided a redacted version of the document in the proceedings before the Court, it was not sufficient to prove that the applicant had been a risk to national security. Nor has she ever had criminal proceedings brought against her for any offence.

*** Interception by a police officer of pieces of paper handed over by a lawyer to his clients, who were under police escort, was not justified (24/05/2018)**

In its judgment in the case of *Laurent v. France* (application no. 28798/13) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 8 (right to respect for private life and correspondence)** of the European Convention on Human Rights.

The case concerned the interception by a police officer of papers that a lawyer (Mr Laurent) had handed over to his clients, who were under police escort, in the lobby of a court building. The Court found that the interception and opening of Mr Laurent's correspondence with his clients, in his capacity as a lawyer, had not corresponded to a pressing social need and had therefore not been necessary in a democratic



society within the meaning of Article 8 of the Convention. The Court specified that a folded sheet of paper on which a lawyer has written a message before handing it over to his clients was protected correspondence within the meaning of Article 8. It emphasized that the content of the documents intercepted by the police officer was immaterial given that, whatever its purpose, correspondence between lawyers and their clients concerned matters of a private and confidential character. In the present case, Mr Laurent, in his capacity as a lawyer, had written and handed over the papers in question to his clients in full view of the senior escorting officer, without attempting to conceal his actions. In the absence of any suspicion of an unlawful act, the interception of the documents could not be justified.

*** Bulk interception of communications in Sweden meets Convention standards (19/06/2018)**

In its Chamber judgment in the case of *Centrum för rättvisa v. Sweden* (application no. 35252/08) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 8 (right to respect for private and family life, the home and the correspondence)** of the European Convention on Human Rights.

The case concerned a complaint brought by a public interest law firm alleging that legislation permitting the bulk interception of electronic signals in Sweden for foreign intelligence purposes breached its privacy rights. The Court considered that the relevant legislation amounted to a system of secret surveillance that potentially affected all users of mobile telephones and the Internet, without their being notified. Also, there was no domestic remedy providing detailed

grounds in response to a complainant who suspected that his or her communications had been intercepted. On that basis, the Court found it justified to examine the legislation in the abstract.

The law firm could claim to be a victim of a violation of the Convention, although it had not brought any domestic proceedings or made a concrete allegation that its communications had actually been intercepted. The mere existence of the legislation amounted in itself to an interference with its rights under Article 8. The Court went on to say that, although there were some areas for improvement, overall the Swedish system of bulk interception provided adequate and sufficient guarantees against arbitrariness and the risk of abuse. In particular, the scope of the signals intelligence measures and the treatment of intercepted data were clearly defined in law, permission for interception had to be by court order after a detailed examination, it was only permitted for communications crossing the Swedish border and not within Sweden itself, it could only be for a maximum of six months, and any renewal required a review. Furthermore, there were several independent bodies, in particular an inspectorate, tasked with the supervision and review of the system. Lastly, the lack of notification of surveillance measures was compensated for by the fact that there were a number of complaint mechanisms available, in particular via the inspectorate, the Parliamentary Ombudsmen and the Chancellor of Justice.

When coming to that conclusion, the Court took into account the State's discretionary powers in protecting national security, especially given the present-day threats of global terrorism and serious cross-border crime.

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





Judgment

KI 122/17

Applicant

Česká Exportní Banka A.S.

Request for constitutional review of Decision Ae. No. 185/2017 of the Court of Appeals of 11 August 2017, and Decision IV. EK. C. No. 273/2016 of the Basic Court in Prishtina of 14 June 2017

The Applicant was a foreign company, „Česká Exportní Banka A.S.“, based in the Czech Republic, which had concluded a work contract with a local company, „Compact Group L.L.C.“, based in the Republic of Kosovo. The contracting parties agreed that their disputes would be resolved through arbitration, before the Arbitration Court of the Czech Chamber of Commerce. The latter, upon the Applicant's request, issued an Arbitration Award by which it obliged „Compact Group L.L.C.“ to pay the Applicant an amount of 1,364,527.00 € plus default interest. The Arbitration Award was upheld by the regular courts and was declared as enforceable decision in the Republic of Kosovo. Furthermore, the Enforcement Order issued by the Private Enforcement Agent, which required the execution of the Arbitration Award, was also upheld.

I.

One day after the Arbitration Award was upheld as a final, binding and enforceable decision in the Republic of Kosovo, the „Compact Group L.L.C.“ rendered the Decision for the voluntary dissolution of their company. Through this decision, the „Compact Group L.L.C.“ declared that it did not have any unpaid obligation towards third parties. The Applicant requested the Basic Court in Pristina – Department for Commercial Matters, the annulment of the Decision on voluntary dissolution as unlawful. In addition to the requests in his main claim, the Applicant requested the Basic Court to impose an injunctive relief aimed at safeguarding the assets and means necessary for the execution of the Arbitration Award. Regarding the Applicant's request for injunctive relief, there were four sets of first instance and appeal decisions, respectively four Basic

Court decisions and four Court of Appeals decisions. Before the Constitutional Court, the fourth set of decisions is being challenged. The Applicant alleges that the fourth set of decisions violated its right to a fair trial because they overturned previous decisions which the Applicant considered to be final and binding, and, as such, *res judicata*.

The Applicant, in addition to the request to declare the challenged decisions invalid, it also requested that the decisions that had become final and binding be declared *res judicata* decisions. The Applicant's main argument was that the Court of Appeals had reopened by self-initiative and beyond the requests of the litigating parties, the issues which had already been confirmed by its own earlier decision.

II.

The Constitutional Court declared the Referral admissible and found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, because it considered that the Court of Appeals did not respect the principle of legal certainty and did not respect a final decision. The Court also found that the Court of Appeals ignored in entirety all the Applicant's allegations in respect of *res judicata* issues and did not respond to the Applicant's arguments in this regard. As a result of these violations, the Court found that the Applicant has been deprived of the benefit of a final and binding court decision.

Regarding the proceedings as a whole, the Court also expressed its concern that the Applicant is compelled to undertake these additional proceedings against the voluntary dissolution of the respondent company in order to realize the execution of a final and binding judicial decision regarding its Arbitration Award.

Another important point of this Judgment is that, for the first time, the Court has interpreted the applicability of Article 31 of the Constitution (and Article 6 of the ECHR) in the preliminary proceedings. Based on the ECtHR case law (*Micallef v. Malta*, Application No. 17056/06, Judgment, [GC], 15 October 2009), the Court stipulated a two-step test based on which the applicability of these guarantees should be considered on case-by-case basis.

Finally, the Court declared the Referral admissible; it held that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR; it found that the fourth group of (challenged) decisions are null and void; it found that the Decision of the Court of Appeals [Ae. No. 185/2017 of 16 December 2017] is final and binding, and as such *res judicata* regarding three specific points, which must be executed.



Judgment

KI 146/17, KI 147/17, KI 148/17, KI 149/17 and
KI 150/17

Applicant

Isni Thaçi, Zeqir Demaku, Fadil Demaku, Nexhat
Demaku and Jahir Demaku

*Request for constitutional review of Judgment PML.
KZZ. No. 322/2016 of the Supreme Court of Kosovo of
19 July 2017*

In 2013, against Isni Thaçi, Zeqir Demaku, Fadil Demaku, Nexhat Demaku and Jahir Demaku (hereinafter: the Applicants) and some other persons, the EULEX Prosecutor of the Special Prosecution Office of the Republic of Kosovo (SPRK Prosecutor) filed an indictment on the grounded suspicion that in 1998, in co-perpetration, they committed the criminal offense of war crimes in serious violation of Article 3 Common to the Geneva Conventions.

In 2015, the Basic Court in Mitrovica found the Applicants guilty of the commission of the above-mentioned criminal offenses. The Applicants filed an appeal against the Judgment of the Basic Court, challenging, *inter alia*, the composition of the trial panel of the Basic Court, the legitimacy of the examined witnesses and non-questioning of forensic expert. The Court of Appeals rejected the appeals of the parties and upheld the Judgment of the Basic Court. Against the judgment of the Court of Appeals, the Applicants filed a request for protection of legality with the Supreme Court of Kosovo, alleging, *inter alia*, that the trial panel of the Basic Court was composed in violation of the applicable rules for the appointment of EULEX Judges, in trial panels. They also reiterated their allegations about the legitimacy of the witnesses examined and the non-questioning of the forensic expert. The Supreme Court, by Judgment PML. KZZ. No. 322/2016 of 19 July 2017, rejected as ungrounded the request for protection of legality. However, as to the Applicants' allegations of violation of the rules for the appointment of judges to the trial panel of the Basic Court, the Supreme Court reasoned that, based on the Guidelines for case allocation for EULEX judges in criminal cases, the President of EULEX judges has

full discretion to assign judges to the panels. Furthermore, the Supreme Court held that even if there has been a violation of the EULEX internal regulation (the Guidelines), then it would be a matter of discretion within the EULEX disciplinary/administrative authorities.

I.

In December 2017, the Applicants submitted their Referrals to the Constitutional Court requesting the constitutional review of the Judgment of the Supreme Court. The Applicants alleged before the Constitutional Court that by rejecting their request for protection of legality as ungrounded, the Supreme Court violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the European Convention on Human Rights. In this regard, *inter alia*, they complained that the Supreme Court did not properly address the issue of appointment of judges to the Basic Court, alleging that this was done in violation of the rules for the appointment of judges in the trial panels. Regarding the fulfillment of the admissibility criteria, the Court found that the Applicants submitted the Referrals within the time limits specified in Article 49 of the Law and after exhaustion of all legal remedies provided by law. The Court also considered that the Applicants' Referral raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits.

II.

In addressing the Applicants' allegations, the Constitutional Court clarified that the right to a fair trial includes the right to a reasoned decision. The Constitutional Court further held that, in examining the Applicants' allegations regarding the appointment of judges to the Basic Court, the reasoning of the Supreme Court was mainly limited to a possible violation of the Criminal Procedure Code which he did not sufficiently reason and did not take into account the other legal provisions for the assignment of judges to the trial panels. The Constitutional Court found that by failing to provide a thorough assessment and justification, as to whether the procedural guarantees were complied with when assigning judges in the trial panel in the Basic Court, the Supreme Court violated the Applicants' right to a reasoned decision, and accordingly the right to fair and impartial trial. However, as regards the allegations of the legitimacy of witnesses and the non-summoning of the forensic expert, the Court found that the Supreme Court provided a detailed reasoning.

The Constitutional Court declared invalid the Judgment of the Supreme Court, in accordance with Rule 74 (1) of the Rules of Procedure and remanded the case for reconsideration. In its judgment, the Constitutional Court also clarified that in the present case it only examined the aspects of complying with the constitutional and human rights proceedings without prejudicing the guilt or innocence of the Applicants.



Judgment

KO 12/18

Applicant

Albulena Haxhiu and 30 other deputies of the
Assembly of the Republic of Kosovo

Request for constitutional review of Decision No. 04/20 of the Government of the Republic of Kosovo, of 20 December 2017

On 20 December 2017, the Government of the Republic of Kosovo rendered Decision No. 04/20 on changing and raising gross salaries of senior state functionaries and their subordinates. This difference of salary *ex lege* was also valid for judges and prosecutors of all instances in the Republic of Kosovo. Two days later, on 22 December 2017, the Kosovo Assembly adopted Law No. 06/L-020 on the Budget of the Republic of Kosovo.

On 29 January 2018, 31 deputies of the Assembly of Kosovo submitted a request to the Constitutional Court for the constitutional review of Decision No. 04/20 of the Government, alleging that the challenged decision did not comply with Articles 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], 7 [Values], 65 [Competencies of the Assembly], 92 [General Principles] and 93 [Competencies of the Government] of the Constitution of the Republic of Kosovo. The Applicants, among other things, alleged that the difference and increase of salaries is an exclusive competence of the Assembly, that the difference and increase of salaries for state functionaries and the justice sector should be made by law approved by the Assembly, that the increase in salaries directly affects the budget of Kosovo and that the difference of salaries constitutes a conflict of interest. The Constitutional Court declared the Referral admissible for review after finding that the issues raised in the Referral are of such complexity, that their determination should depend on the review of the merits and that the Referral cannot be regarded as manifestly ill-founded within the meaning of Rule 36 (1) (d) of the Rules of Procedure of the Court.

I.

After reviewing the allegations and arguments of the

Applicants, the Constitutional Court stated that: (i) it has not been proven that the decision on increase of salaries constitutes a matter of the constitutional level; (ii) based on the arguments presented, it does not result that the Assembly was not infringed upon or prevented from exercising its constitutional competences regarding the approval and implementation of the state budget; (iii) as far as the conflict of interest is concerned, it is not within the scope of the Court to assess the allegations of contradiction of the challenged decision with the Law on Prevention of Conflict of Interest in the Exercise of Public Functions because that case falls under the jurisdiction of other authorities defined by the Constitution; and (iv) as regards the violations of Articles 3 [Equality Before the Law] and 7 [Values] of the Constitution, the Applicants have not presented any convincing evidence that the salaries foreseen by the challenged Decision treat differently similar positions or situations and whether such difference in treatment does not have an objective and reasonable justification. The Court further added that it is not within its scope to assess or substitute for the public policies set by the legislative or executive body. The principle of the separation of powers requires from the Court to respect the setting of the policies by the respective constitutional bodies. Key decisions in policy-making for the governance of a country must be made by the constitutional bodies who have democratic legitimacy, namely by the Assembly and the Government. Such bodies - due to their nature and the democratic legitimacy - are in a better position than the Constitutional Court to set and advance budgetary, economic and social policies of the country.

II.

In this regard, the Constitutional Court considered that the Applicants have not presented convincing evidence to substantiate their allegations that the challenged decision of the Government has produced constitutional effects in terms of infringing upon the constitutional competences of the Assembly or violating any constitutional provision, as alleged by the Applicants. The Court also noted that the sub-legal acts of the Government should comply with the Constitution and laws. Furthermore, the Court considers that in accordance with the executive nature of its constitutional competences, the Government is obliged to implement the state budget approved by the Assembly. Therefore, it is the obligation of the Government to support the implementation of the challenged decision in the budget allocations determined in the Budget for 2018 and in the relevant laws.

Finally, the Constitutional Court, pursuant to Article 113.2 (1) and 116.2 of the Constitution, Articles 27 (1), 29 and 30 of the Law and in accordance with Rules 29, 54, 55 and 56 (1) of the Rules of Procedure, found that Decision No. 20/14 of the Government of the Republic of Kosovo, of 20 December 2017, is not in contradiction with the alleged Articles of the Constitution.

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, as in the case of construction of the Courtroom of the Court which has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the Library of the Court which was entirely supported by the GIZ Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011.

The building of the Court has a usable office space of 784 m² and is used by 65 employees.



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