



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO



## Newsletter

July — December 2018



CONTENT:

SIX MONTHS WORKING REPORT.....2

ACTIVITIES OF THE CONSTITUTIONAL COURT.....4

JUDGMENTS.....8

ECtHR – IMPORTANT DECISIONS .....9



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.

The Court is currently composed of 9 (nine) national judges.

## Status of cases

During the six-month period: 1 July – 31 December 2018, the Court has received 117 Referrals and has processed a total of 208 Referrals/Cases. A total of 42 Referrals were decided or 20.2 % of all available cases.

During this period, 33 decisions were published on the Court's webpage .

*The dynamics of received referrals by month  
(1 July - 31 December 2018)*



The following are 3 judgments that the Court rendered during the six month period, 1 July - 31 December 2018:

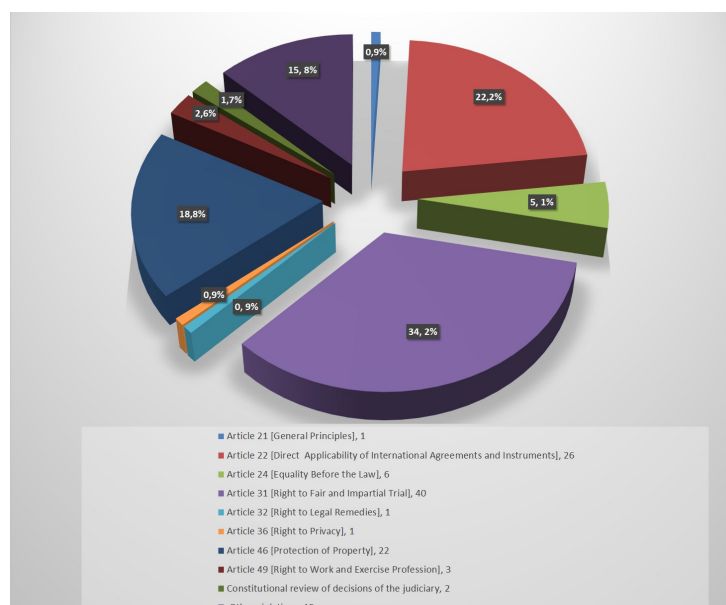
- Judgment in Case KO 84/18, submitted by: Albin Kurti and 11 other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Decision No. 06/V-145 of the Assembly of the Republic of Kosovo regarding the proposal of the Parliamentary Group of Vetëvendosje Movement! on dismissal of Aida Dërguti from the position of Vice President of the Assembly of the Republic of Kosovo.
- Judgment in Case KI 47/17, submitted by: Selvete Aliji. The filed referral requested the constitutional review of Decision AC. No. 2812/2016 of the Court of Appeals of Kosovo of 9 December 2016.
- Judgment in Case KI 150/16, submitted by: Mark Frrok Gjokaj. The filed referral requested the constitutional review of Decision CLM. No. 11/2016 of the Supreme Court of the Republic of Kosovo of 13 September 2016.

## Types of alleged violations

The types of alleged violations in the 117 referrals received during the six-month period: 1 July - 31 December 2018, are the following:

- Article 21 [General Principles], 1 case or 0.9%;
- Article 22 [Direct Applicability of International Agreements and Instruments], 26 cases or 22,2%;
- Article 24 [Equality Before the Law], 6 cases or 5,1%;
- Article 31 [Right to Fair and Impartial Trial], 40 cases or 34,2 %;
- Article 32 [Right to Legal Remedies], 1 case or 0,9%;
- Article 36 [Right to Privacy], 1 case or 0,9%;
- Article 46 [Protection of Property], 22 cases or 18,8%;
- Article 49 [Right to Work and Exercise Profession], 3 case or 2,6%;
- Constitutional review of decisions of the judiciary, 2 cases or 1,7 %;
- Other violations, 15 cases or 12,8%;

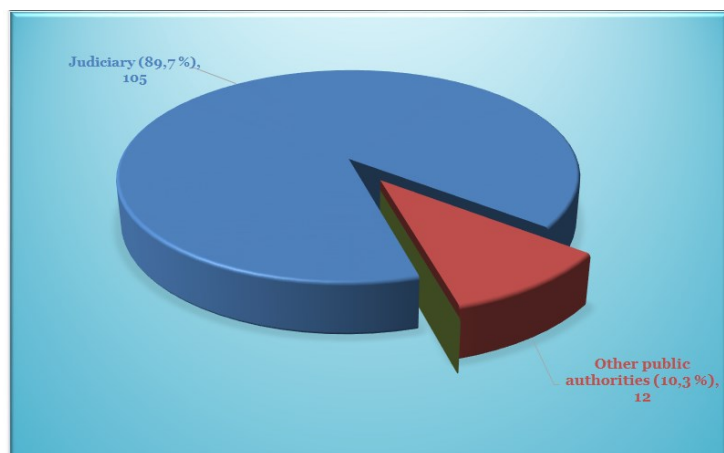
*Alleged violations by type  
(1 July - 31 December 2018)*



## Alleged violators of rights

- 105 or 89,7 % of Referrals refers to violations allegedly committed by court's decisions
- 12 or 10,3 % of Referrals refers to decisions of other public authorities

*Alleged violators of rights  
(1 July - 31 December 2018)*

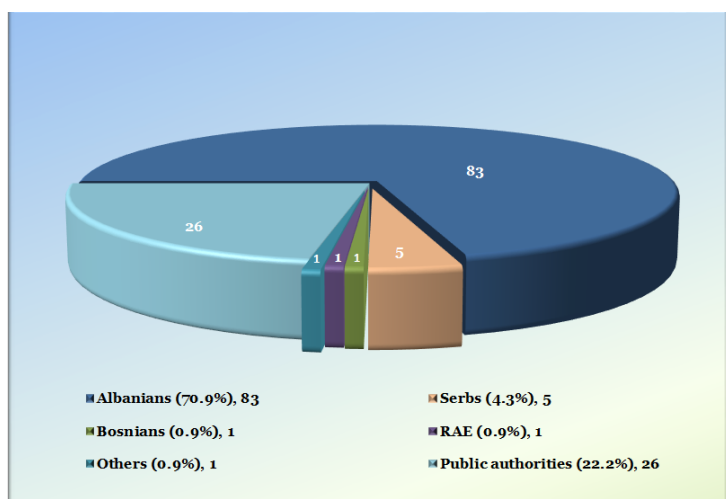


## Access to the Court

The access of individuals to the Court is the following:

- 83 Referrals were filed by Albanians, or 70,9%;
- 5 Referrals were filed by Serbs, or 4,3%;
- 1 Referral was filed by Bosnians, or 0,9%;
- 1 Referral was filed by members of RAE community, or 0,9%;
- 1 Referral was filed by others, or 0,9%;
- 26 Referrals were filed by other public authorities (legal persons), or 22,2%;

*Ethnic structure of the Applicants  
(1 July - 31 December 2018)*



## Sessions and Review Panels

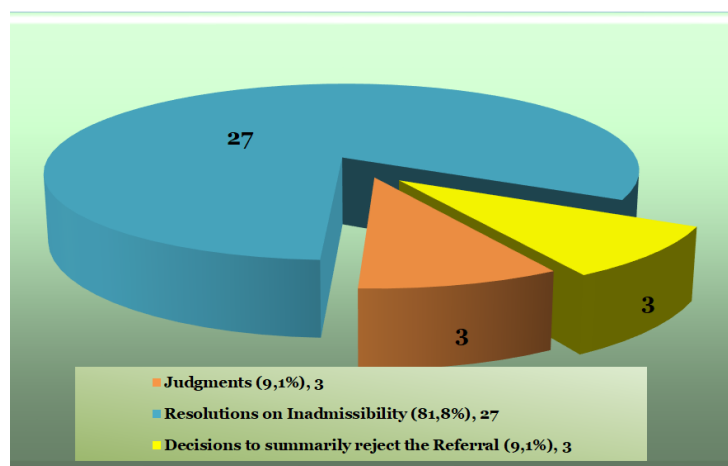
During the six-month period: 1 July - 31 December 2018, the Constitutional Court held 11 plenary sessions and 42 Review Panels in which the cases were resolved by decisions, resolutions and judgments.

During this six-month period, the Constitutional Court has published 33 decisions.

The structure of the published decisions is the following:

- 3 Judgments (9,1%)
- 27 Resolutions on Inadmissibility (81,8%)
- 3 Decisions to summarily reject the Referral (9,1%)

*Structure of decisions  
(1 July - 31 December 2018)*





4 July 2018



The President of the Constitutional Court of the Republic of Kosovo, Ms. Arta Rama-Hajrizi, welcomed in a meeting the Ambassador of Germany to Kosovo, Mr. Christian Heldt, who was accompanied by the Head of Legal Reform Project of German Agency for International Cooperation (GIZ) in Prishtina, Mr. Karl Weber. President Rama-Hajrizi informed Ambassador Heldt of the work that the Court has done so far, its current composition, and the lack of quorum needed to review the submitted referrals and render decisions. After emphasizing the consequences of the Constitutional Court workflow being inhibited due to the lack of a sufficient number of judges, she took the opportunity to thank the German Government for the assistance it has provided to the Court through the projects supported by the German Agency for International Cooperation (GIZ) and expressed her willingness to further strengthen this good cooperation in the future. President Rama-Hajrizi further reemphasized the urgency and need to appoint new judges to the Constitutional Court, considering the essential role this institution plays in preserving the constitutional order and protecting the human rights in the country.

Ambassador Heldt committed to providing the Constitutional Court with further support in its work and mission to implement constitutionality, and highlighted the necessity of appointing the new Constitutional Court judges as soon as possible and restoring the full functionality of the Constitutional Court.

13 July 2018

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, stayed on an official visit to the Principality of Andorra at the invitation of the Constitutional Court of this country. She has been invited to attend the International Conference on the topic: *“The Constitutional Courts: A warranty of the democratic quality of societies”*, organized on the occasion of the 25th anniversary of the establishment of the Constitutional Court of Andorra in the capital Andorra la Vella.

President Rama-Hajrizi addressed the participants at the International Conference, Presidents and Judges of Constitutional and Supreme Courts from all over the world, with a presentation on the topic: *“The separations of powers warranty”*, whereby she disclosed her views on the necessity of the separation of powers and the important role played by the constitutional courts in this process.

During her visit to the Andorran capital, President Rama-Hajrizi also met with the President of the Constitutional Court of Andorra, Mr. Isidre Molas Batllori, as well as with the Deputy President of this Court and its next President, Mr. Dominique Rousseau.



5 October 2018

The Constitutional Court of the Republic of Kosovo, in cooperation with the Supreme Court of the Republic of Kosovo and with the support of the German Foundation for International Legal Cooperation (IRZ), organized a workshop on *“Constitutional complaints and recent developments in the case-law of the ECtHR”*, which was held in Thessaloniki.



Fundamental civil and judicial rights, binding force of the national law and decisions of the constitutional courts, as well as the binding force of the laws and decisions of the European Court of Human Rights (ECtHR) were only some of the topics elaborated



during the discussions conducted between judges and legal advisors of the Constitutional Court and the Supreme Court of Kosovo.

The criteria of admissibility of constitutional complaints, appropriate subject matter of the constitutional complaint, exhaustion of legal remedies and deadlines for submitting complaints and most recent decisions of ECtHR were also a topic of discussion over which the participants of the workshop exchanged their points of view.

Moderator and one of the main speakers in the workshop was the Presiding Judge of the Higher Administrative Court of Baden-Württemberg of Germany, Prof. Dr. Jan Bergmann, who at the same time is professor of the Public, Constitutional and European Law in the University of Stuttgart.

**12 October 2018**



The President of the Constitutional Court of the Republic of Kosovo, Ms. Arta Rama-Hajrizi received in a meeting Ms. Ulrika Richardson-Golinski, UN Development Coordinator and UNDP Resident Representative to Kosovo. During the meeting, President Rama-Hajrizi informed Ms. Richardson-Golinski of the achievements that the Constitutional Court has made so far and the challenges it currently faces in its work. Among others, she also emphasized that following the appointment of new judges, which took place a few months ago, the Court has reached the necessary quorum to review referrals and render decisions. Furthermore, President Rama-Hajrizi thanked Ms. Richardson-Golinski for the contribution and assistance that UNDP has provided thus far to the Republic of Kosovo through various development projects, and expressed the need that state institutions have for further support from this organization and other international donors as well. On her part, Ms. Richardson-Golinski expressed the UNDP willingness to continue the cooperation and further support the Kosovo institutions in their work.

**15 October 2018**

At the invitation of the Organization for Security and Cooperation in Europe (OSCE), the President of the

Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, stayed for an official visit to the Israeli city of Haifa. She was invited to attend the 4th International Seminar for Judges, on the topic: *“The critical role of the judiciary in combating trafficking in human beings”*, held in Haifa.

President Rama-Hajrizi was also one of the main panelists of the seminar, on which occasion she delivered a presentation on: *“The role of the Constitutional Court of the Republic of Kosovo in the protection of the victims of trafficking in human beings”*.

**25 October 2018**



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a joint meeting the President of the Constitutional Court of Malta, Mr. Joseph Azzopardi and the judge of this court, Mr. Silvio Meli, the judges of the Constitutional Court of Turkey, Mr. Rıdvan Gulec and Mr. Sadettin Ceyhan, as well as the Judge of the Constitutional Court of Latvia, Mr. Aldis Lavins. During the conversation, President Rama-Hajrizi informed the guests about the functioning of the Constitutional Court, the achievements so far and the challenges faced in her work, especially after change of the structure of judges months ago and the loss of quorum for decision-making.

Further in the conversation, all parties shared their views and experience of the respective courts regarding the standards of constitutional adjudications and the quality of the issued decisions as well as the process of reforms taken in the area of constitutional justice in the countries of origin.

President Azzopardi, together with the judges Meli, Gulec, Ceyhan and Lavins, confirmed their support for the Constitutional Court of Kosovo and its efforts to join the international organizations, expressing at the same time the readiness to deepen the mutual co-operation through the organization of joint projects.

**25 October 2018**

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a joint meeting the President of the European Commission for Democracy through Law (Venice

Commission) Gianni Buquicchio, and the deputy-representative of the Republic of Ireland at the Venice Commission, Ms. Grainne McMorrough. Various topics were discussed at the meeting, with a focus mainly on the issues related to the work of the Constitutional Court of Kosovo, the serious efforts being made to deepen the reforms in the judiciary of



Kosovo and the progress made in the protection of human rights at the country level. President Rama-Hajrizi further in the conversation also noted the challenges that the Constitutional Court faced months ago in its functioning when, after the departure of four constitutional judges it lost the necessary quorum for decision-making, emphasizing the fact that nine years after the Court has been established, the trial panel now is composed of only local judges.

President Rama-Hajrizi highly appreciated the bilateral relations of the Constitutional Court of Kosovo with the Venice Commission as well as with the constitutional courts of the member states, expressing her gratitude for the contribution given by this institution to the promotion of the rule of law and the development of the constitutional judiciary, especially in the European countries in transition.

**25 October 2018**



The Constitutional Court of the Republic of Kosovo celebrated the 9th Judicial Year with a solemn ceremony held at Hotel Emerald in Prishtina. The ceremony was opened with an occasional speech by the President of the Constitutional Court of Kosovo, Mrs. Arta Rama-Hajrizi, in the presence of the highest state and international personalities in Kosovo, as well

as of the highest level delegations from the Venice Commission, the constitutional courts of the countries of the region and other European countries. With an occasional speech, the President of the Republic of Kosovo, Hashim Thaçi, as well as the President of the European Commission for Democracy through Law (Venice Commission), Gianni Buquicchio addressed the participants in the solemn ceremony.

**9 November 2018**



A group of students from the Faculty of Law of "Hasan Prishtina" University in 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 Director of Communication and Information Office, Mr. Veton Dula.

During the meeting, Chief Legal Advisor Kastrati informed the students in more detail on the role, the function and the responsibilities of the Constitutional Court as stipulated by the Constitution, and on its organizational structure, the current composition and the challenges it faces when reviewing referrals, particularly after four judges left the Court a few months ago. Furthermore, Chief Legal Advisor Kastrati talked about the most important decisions of the Court and their impact on both, the rule of law and the state and political organization of the country, by providing practical examples of the case law of the European Court on Human Rights being applied in the decision-making process.

The Director of the Communication and Information Office, Mr. Veton Dula, informed the students in more detail on how to use the new website of the Constitutional Court and the advanced search options to retrieve published decisions.

**16 November 2018**

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, and Judge of the Constitutional Court, Mrs. Gresa Caka-Nimani, stayed for a several-day working visit to Washington. During the stay in the US capital, at the invitation of the US Federalist Society for Law and Public Policy Studies and as part of the network of the European judges, President Rama-Hajrizi and Judge Caka-Nimani held meetings with the representatives of the US Department of Justice and State Department





officials responsible for overseeing the rule of law and fighting of corruption in the countries of southeast and central Europe. The delegation had separate meetings with Mr. Wes Mitchell, Assistant Secretary of State for Europe and Euro-Asia at the State Department and

Deputy Assistant Secretary of State for South and Central Europe, Mr. Matthew Palmer. During the joint meetings, both senior US officials expressed to President Rama-Hajrizi and Judge Caka-Nimani their support for the independence of work of the Constitutional Court, confirming the important role that the Court has in the democratic development of Kosovo and in strengthening the rule of law in the country.

Following the agenda, President Rama-Hajrizi and Judge Caka-Nimani also met with Ms. Fiona Hill, Assistant to the US President and White House National Security Council Senior Director for European and Russian Affairs. They also visited the Supreme Court of the United States, where they were received in a meeting by the judge of this Court, Mr. Samuel Alito.

**30 November 2018**



A group of pupils of the primary school "Faik Konica" in Prishtina visited the Constitutional Court. The pupils were received by the Chief Legal Advisor of the Court, Mr. Sevdail Kastrati, and the Director of the Communication and Information Office, Mr. Vetton Dula. During the conversation with the pupils of primary school, Advisor Kastrati initially made a

brief presentation about the background of the establishment of the Constitutional Court, speaking further about the composition, function and mandate of this institution under the Constitution. How the referrals are submitted and who are the parties authorized to file a referral based on the Constitution, the process of registration and review of cases and the manner of deciding the cases in the Court, were just some of the topics about which the pupils of the primary school "Faik Konica" were informed at the meeting. The visit of pupils was realized with a purpose of their awareness and closer acquaintance with the work and manner of functioning of the Constitutional Court of Kosovo.

**11 December 2018**



Pupils of the eighth grade of the primary school "Qamil Batalli" in Prishtina visited the Constitutional Court. They were received in the meeting by the Chief Legal Advisor of the Court, Mr. Sevdail Kastrati, and the Director of the Communication and Information Office, Mr. Vetton Dula. Advisor Kastrati informed the pupils of the capital about the work of the Constitutional Court so far, with its organizational structure, as well as with the competences of this institution for the protection of constitutionality and human rights in the country. The nature of referrals filed with violation of human rights, the most frequent violations of human rights by public authorities, the most important decisions of the Constitutional Court and the most difficult cases that this court dealt with until now, were just some of the questions asked by the pupils of primary school "Qamil Batalli". The visit of pupils took place on the occasion of the 70th anniversary of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948, also known as the Human Rights Day.





## Judgment

KO 84/18

## Applicant

Albin Kurti and 11 other deputies of the Assembly of the Republic of Kosovo

*Request for constitutional review of Decision No. 06/V-145 of the Assembly of the Republic of Kosovo regarding the proposal of the Parliamentary Group of Vetëvendosje Movement! on dismissal of Aida Dërguti from the position of Vice President of the Assembly of the Republic of Kosovo*

The Referral was filed by 12 (twelve) deputies of the Assembly, based on Article 113.5 of the Constitution of the Republic of Kosovo. The Applicants requested from the Constitutional Court the constitutional review of Decision No. 06/V145 of the Assembly of the Republic of Kosovo regarding the proposal of the Parliamentary Group of Vetëvendosje Movement! for the dismissal of Aida Dërguti from the position of Vice-President of the Assembly (hereinafter: the challenged decision), adopted by the Assembly on 4 June 2018. The Applicants also requested the imposition of interim measure, namely seeking “suspension of exercising the function of vice president of the Assembly of Kosovo [Aida Dërguti]”. The Applicants alleged that the challenged decision is not in accordance with Articles 7 [Values] and 67 [Election of the President and Deputy Presidents] of the Constitution.

- The Court initially assessed whether the submitted Referral fulfills the admissibility requirements as established in the Constitution and further specified in the Law on the Constitutional Court and in the Rules of Procedure of the Court. The Court assessed that the Referral fulfills the admissibility requirements laid down in the Constitution and further specified in the Law and foreseen in the Rules of Procedure, and raises important constitutional issues regarding the election and dismissal of the vice presidents of the Assembly. Therefore, the Court found that the Applicants’ Referral is admissible.

- Regarding the merits of the Referral, the Court, by reviewing and addressing each allegation of the Applicants, assessed and found as follows:

First, the Court considered the allegation of the submissions of the Referral that the position of vice president of the Assembly, pursuant to Article 67, paragraph 3 of the Constitution, is reserved exclusively for the three largest

parliamentary groups deriving from the political parties or coalitions that have won the majority seats in the Assembly as a result of elections for the Assembly. In this regard, the Court held that the interpretation of paragraph 3 of Article 67 of the Constitution results that holding the position of the vice president of the Assembly is not directly related and does not represent the interests of the parliamentary group that has proposed for that position in the Presidency of the Assembly. Consequently, the Court found that the allegation of the Applicants, the position of the vice president of the Assembly, pursuant to Article 67, paragraph 3 of the Constitution, is reserved exclusively for the three largest parliamentary groups deriving from the votes of political parties or coalitions that have won seats in the Assembly as a result of the elections of the Assembly, is not grounded.

Secondly, regarding the procedure followed for the dismissal of the vice president of the Assembly, the Court recalled that according to paragraph 5 of Article 67 of the Constitution, it is foreseen that the vice presidents of the Assembly are dismissed by a majority of two-thirds (2/3) of the general number of deputies. In this regard, the Court found that on 4 June 2018, after discussions in the Assembly, which took place in relation to the LVV proposal for the dismissal of Aida Dërguti from the position of vice president of the Assembly, where there were 94 (ninety four) deputies present, 16 (sixteen) deputies voted for the LVV proposal, 26 (twenty-six) deputies voted against and 47 (forty seven) deputies abstained. Consequently, the LVV proposal did not receive the necessary votes under Article 67, paragraph 5, of the Constitution, for the dismissal of Aida Dërguti from the position of the vice president of the Assembly and on this case the requirements established in Article 67, paragraph 5, that Aida Dërguti be dismissed from the position of vice president have not been met.

Thirdly, the Applicants alleged that “[r]efusal of the dismissal of the vice-president in question, which no longer represents the political power and democratic vote as the Constitution provides, is an abuse of the right to vote and violates the constitutional purpose behind the provisions governing the composition of the Presidency of the Assembly.”

With regard to this allegation, the Court, referring to the constitutional provisions of the Rules of Procedure and its case law, held that the deputies are obliged to participate in the proceedings of the Assembly, including their participation in voting in accordance with the proposals submitted based on the Constitution and other related rules. However, the Court reiterated that the deputies are free to decide how they will vote in respect of proposals submitted to them and may vote for, against, or abstain, taking into account the best interest of the State in accordance with the Constitution and other rules.

In conclusion, the Court found that Decision No. 06/V-145 of the Assembly of the Republic of Kosovo regarding the proposal of the LVV Parliamentary Group regarding the dismissal of Aida Dërguti from the position of vice president of the Assembly of the Republic of Kosovo, is in compliance with Articles 7 and 67 of the Constitution.

## ECTHR – Important decisions (1 July – 31 December 2018)

### \* ECTHR finds that judge's dismissal as the president of a court was unfair, rejects complaint of private life violation (25/09/2018)

In its Grand Chamber judgment in the case of **Denisov v. Ukraine** (application no. 76639/11) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights. It declared **inadmissible** a complaint under **Article 8 (right to respect for private and family life)**.

The case concerned the applicant's removal from the post of president of the Kyiv Administrative Court of Appeal. The Court found that the way that the High Council of Justice had first dismissed Mr Denisov as president of the court owing to managerial inefficiency and that the Higher Administrative Court had later reviewed that decision had revealed similar issues as in the case of *Oleksandr Volkov v. Ukraine*. The first body had not been sufficiently independent and impartial and the second had not been able to remedy the defects of the first set of proceedings. There had therefore been a violation of the right to a fair trial. After a review of its case-law, the Court noted that the protection of private life under Article 8 of the Convention could also be relied on in work-related disputes. However, it could not be applied in Mr Denisov's particular case as the reasons for his dismissal had not been linked to his private life and the dismissal itself had not had a significant impact on his private life after that. For instance, the consequences he had suffered in terms of lost prestige for no longer being the president of a court or because of the loss of salary, had not been severe enough to bring this provision of the Convention into play.

### \* Procedural defects in a search of a lawyer's office: violation of the right to respect for one's home (04/10/2018)

In its Chamber judgment in the case of **Leotsakos v. Greece** (application no. 30958/13) 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, the home and the correspondence)** of the European Convention on Human Rights.

The case concerned a search of the professional premises of a lawyer (Mr Leotsakos) and the seizure of several items and documents in the framework of a criminal investigation concerning him personally. The Court found in particular that the procedural defects were such that the search and seizure carried out in Mr Leotsakos' law office could not be regarded as reasonably proportionate to the pursuit of the

legitimate aims (the prevention of crime) in view of the interest of a democratic society in ensuring respect for one's home. Among other shortcomings, Mr Leotsakos had not been present at any time during the search, which lasted for 12 days, and the authorities had confiscated computers and hundreds of documents, including client files covered by professional secrecy.

The presence of a neighbour as an independent witness had not been a sufficient safeguard because she had no legal knowledge and was incapable of identifying documents which concerned clients' cases.

### \* Inability of a transgender person with a female appearance to change her male forename prior to surgery: violation of the right to private life (11/10/2018)

In its Chamber judgment in the case of **S.V. v. Italy** (application no. 55216/08) 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)** of the European Convention on Human Rights.

The case concerned the Italian authorities' refusal to authorise a transgender person with a female appearance to change her male forename, on the grounds that no final judicial ruling had been given confirming gender reassignment.

In May 2001 the Rome District Court authorised S.V. to undergo gender reassignment surgery. However, under the legislation in force at the time, she was unable to change her forename until the court confirmed that the surgery had been performed and gave a final ruling on her gender identity, which it did on 10 October 2003.

The Court observed at the outset that this issue came entirely within the scope of the right to respect for private life. It went on to find that S.V.'s inability to obtain a change of forename over a period of two and a half years, on the grounds that the gender transition process had not been completed by means of gender reassignment surgery, amounted to a failure by the State to comply with its positive obligation to secure the applicant's right to respect for her private life.

In the Court's view, the rigid nature of the judicial procedure for recognising the gender identity of transgender persons, as in force at the time, had left S.V. – whose physical appearance and social identity had long been female – for an unreasonable period of time in an anomalous position apt to engender feelings of vulnerability, humiliation and anxiety.

Lastly, the Court observed that the legislation had been amended in 2011, with the result that a second court ruling was no longer required and amendment of the civil-status records could now be ordered by the judge in the decision authorising the gender reassignment surgery.



**\* Presence of prosecutor's father on Supreme Court panel infringed the right to a fair and impartial trial (16/10/2018)**

The case of *Dainelienė v. Lithuania* (application no. 23532/14) concerned the Lithuanian Supreme Court's alleged failure to carry out a fair and impartial consideration of an appeal on points of law against a ruling of embezzlement of property. In its Committee judgment the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights.

The Court found in particular that the Supreme Court's impartiality had been compromised because the son of the judge presiding over the panel which had decided not to examine the applicant's appeal on points of law had been the prosecutor in earlier embezzlement proceedings against her. The Court also reiterated that Contracting States are under an obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, and notably with the requirement of impartiality. With respect to this case and others like it, the Court noted that a system should exist to ensure that a judge does not receive a case in which a close family member is involved and that judges should take steps to check whether such a conflict might exist.

**\* Conviction for calling Muhammad a paedophile is not in breach of Article 10 (25/10/2018)**

In its Chamber judgment in the case of *E.S. v. Austria* (application no. 38450/12) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the applicant's conviction for disparaging religious doctrines; she had made statements suggesting that Muhammad had had paedophilic tendencies. The Court found in particular that the domestic courts comprehensively assessed the wider context of the applicant's statements and carefully balanced her right to freedom of expression with the right of others to have their religious feelings protected, and served the legitimate aim of preserving religious peace in Austria. It held that by considering the impugned statements as going beyond the permissible limits of an objective debate, and by classifying them as an abusive attack on the Prophet of Islam which could stir up prejudice and threaten religious peace, the domestic courts put forward relevant and sufficient reasons.

**\* Violation of the right to respect for private life of two academics who were targeted by threats and hate speech in newspaper articles (30/10/2018)**

In its Chamber judgment in the case of *Kaboğlu and Oran v. Turkey* (application nos. 1759/08, 50766/10 and 50782/10) 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)** of the European Convention on Human Rights.

The case concerned newspaper articles containing threats and hate speech against the applicants, attacking them for the ideas they had presented in a report addressed to the government concerning questions of minority and cultural rights. The applicants lost their cases before the domestic courts, which took the view that the offending articles fell within legislation protecting freedom of expression. The Court found in particular that the verbal attacks and threats of physical harm made against the applicants sought to undermine their intellectual personality, causing them feelings of fear, anxiety and vulnerability in order to humiliate them and break their will to defend their ideas. The Court also found that the domestic courts had not provided a satisfactory answer to the question of whether freedom of the press could justify, in the circumstances of the case, the damage caused to the applicants' right to respect for their private life by passages amounting to hate speech and incitement to violence, thus being likely to expose them to public contempt. The Court concluded that the domestic courts had not struck a fair balance between the applicants' right to respect for their private life and freedom of the press.

**\* Failure of the State to protect its citizen from an attack by a mentally ill person (06/11/2018)**

In its Judgment in the case of *Milićević v. Montenegro* (application no. 27821/16) 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)** of the European Convention on Human Rights.

The case concerned the complaint of the applicant, Mr. Zdravko Milićević, a Montenegrin national, that the State had failed to protect him from an attack by a mentally ill person. In February 2013 an individual, X, attacked Mr Milićević inside his coffee bar with a hammer. He was taken to hospital with a head injury. X was arrested, prosecuted for violent behaviour against Mr Milićević and ordered to have mandatory psychiatric treatment in a hospital. At the same time, he was found guilty of stabbing another man, causing him light bodily injuries, four months before the attack on Mr Milićević.

Mr Milićević instituted civil proceedings for compensation, submitting that he had reported X to the police for threatening him a few days before the attack and that he had already attacked others. The courts ruled against him in 2015, finding that the police had acted as required and that the State was not



liable for any damage. During both sets of proceedings, it transpired that X suffered from schizophrenia and was a long-term psychiatric patient. The courts noted that he had a history of violent behaviour, which included attacking his neighbours and setting his flat on fire. The Court examined Mr Milićević's complaint that the State had failed to prevent the attack on him, despite the police being aware of the risk X posed, under Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

**\* Punishment of publisher for article which criticised a judge breached the right to freedom of expression (08/11/2018)**

In its Chamber judgment in the case of *Narodni List D.D. v. Croatia* (application no. 2782/12) 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 the freedom of the press to criticise judges. The applicant, the publisher of a weekly magazine, complained about a domestic court decision finding that it had defamed a county court judge and ordering it to pay over 6,000 euros in damages. The decision referred to an article the applicant had published criticising the judge for going to a party despite a potential conflict of interest and for issuing an unjustified search warrant of its premises. The Court found that, save in the case of gravely damaging and unfounded attacks, individuals could not be banned altogether from criticising the justice system. The article had covered a matter of public interest, namely the functioning of that system, and, although caustic, it had not been insulting. The way in which it had been written had not therefore been incompatible with the right to freedom of expression under the European Convention. Moreover, the award of damages was excessive which could, in the Court's view, discourage open discussion on matters of public concern.

**\* Chief prosecutor's rights breached when dismissed for making statements to the press about an ongoing criminal investigation (11/12/2018)**

In its Chamber judgment in the case of *Brișcă v. Romania* (application no. 26238/10) the European Court of Human Rights held, by five votes to two, that there had been: **a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned a chief prosecutor's dismissal for breaching the secrecy of a criminal investigation when he made statements to the press. He was sanctioned following a judge's complaint that his press release and interview with a television channel had allowed

the media to identify her as being implicated in a money scam. The Court found in particular that the sole purpose of the applicant's press release and interview had been to inform the press about an ongoing criminal investigation of evident interest to the public and not at all to accuse magistrates of an offence. Moreover, it was one of the applicant's assigned duties to provide information to the press and he had not revealed any information in either his press release or television interview which could have led to the identification of the individuals involved. Indeed, the domestic authorities had limited their analysis of the case to the damage to the judge's reputation, without taking into account the fact that the defamatory statements about the judge had not come from the applicant but from a third party, namely the newscaster of his television interview.

**\* Slovakian authorities failed to investigate possible racist motive in shooting by off-duty police officer at Roma family's home (11/12/2018)**

In its Chamber judgment in the case of *Lakatošová and Lakatoš v. Slovakia* (application no. 655/16) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 14 (prohibition of discrimination), read in conjunction with Article 2 (right to life)**, of the European Convention on Human Rights.

The case concerned a shooting spree in 2012 by an off-duty police officer at the home of a Roma family. The two applicants in the case, a married couple, were seriously injured and three members of their family were killed. When questioned by the police, the officer stated that he had been thinking about "a radical solution" for "dealing with" Roma people. He was ultimately given a reduced sentence of nine years' imprisonment owing to diminished responsibility. The ruling was adopted in the form of a simplified judgment which contained no legal reasoning.

The Court found that there had been plausible information in the case to alert the authorities to the need to carry out an investigation into a possible racist motive for the assault. It observed that racist violence was a particular affront to human dignity, and required special vigilance and a vigorous reaction from the authorities. Nevertheless, the authorities had failed to thoroughly examine powerful indicators of racism in the case such as the police officer's frustration at his inability to resolve public order issues concerning Roma, as suggested in his psychological assessment. In addition, the police officer had not been charged with a racially motivated crime and the prosecutor had not at all addressed or discussed the possible aggravating factor of a racist motive in the bill of indictment. Moreover, the courts had failed to remedy in any way the limited scope of the investigation and prosecution and the simplified judgment in the case had contained no legal reasoning





to address that shortcoming. Indeed, as the applicants had been civil parties to the proceedings, they had only been allowed to raise issues concerning their claims for damages.

**\* Sharia law applied to an inheritance dispute contrary to the will of the testator, a Greek belonging to the Muslim minority: violation of the Convention (19/12/2018)**

In its Grand Chamber judgment in the case of ***Molla Sali v. Greece*** (application no. 20452/14) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 14 (prohibition of discrimination)** of the European Convention on Human Rights, **read in conjunction with Article 1 of Protocol No. 1 (protection of property)** to the Convention.

The case concerned the application by the domestic courts of Islamic religious law (Sharia) to an inheritance dispute between Greek nationals belonging to the Muslim minority, contrary to the will of the testator (a Greek belonging to the Muslim minority, Ms Molla Sali's deceased husband), who had bequeathed his whole estate to his wife under a will drawn up in accordance with Greek civil law. The courts considered the will devoid of effect because the law applicable to the case was Islamic inheritance law. They ruled that in Greece, the latter law applied specifically to Greeks of Muslim faith. Ms Molla Sali, who had been deprived of three-quarters of her inheritance, submitted that she had suffered a difference in treatment on grounds of religion because had her husband not been of Muslim faith, she would have inherited the whole estate. The Court found in particular that the difference in treatment suffered by Ms Molla Sali as the beneficiary of a will drawn up

under the Civil Code by a Greek testator of Muslim faith, as compared with a beneficiary of a will drawn up under the Civil Code by a Greek testator not of Muslim faith, had not been objectively and reasonably justified.

The Court pointed out, *inter alia*, that freedom of religion did not require the Contracting States to create a particular legal framework in order to grant religious communities a special status entailing specific privileges. Nevertheless, a State which had created such a status had to ensure that the criteria established for a group's entitlement to it were applied in a non-discriminatory manner. Furthermore, refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounted not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification.

Lastly, the Court noted that Greece was the only country in Europe which, up until the material time, had applied Sharia law to a section of its citizens against their wishes. That was particularly problematic in the present case because the application of Sharia law had led to a situation that was detrimental to the individual rights of a widow who had inherited her husband's estate in accordance with the rules of civil law but who had then found herself in a legal situation which neither she nor her husband had intended.

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





# 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 m<sup>2</sup> 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](mailto:gjykata.kushtetuese@gjk-ks.org)

Web: [www.gjk-ks.org](http://www.gjk-ks.org)