



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

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Prishtina, 19 February 2019  
Ref. no.:RK 1327/19

## **RESOLUTION ON INADMISSIBILITY**

in

**cases no. KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18,  
KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18,  
KI117/18, KI119/18 and KI125/18**

Applicant

**Fehmi Hoti and 15 others**

**Constitutional review of 16 decisions of the Supreme Court of Kosovo  
rendered between 26 March and 12 April 2018**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge.

### **Applicants**

1. Referral KI96/18 was submitted by Fehmi Hoti; Referral KI97/18 was submitted by Kada Gjinovci; Referral KI98/18 was submitted by Avdie

Mehmeti; Referral KI99/18 was submitted by Hamze Fekaj; Referral KI100/18 was submitted by Brahim Hasani; Referral KI101/18 was submitted by Ramadan Azemi; Referral KI102/18 was submitted by Hamdi Sejdiu; Referral KI103/18 was submitted by Xhevat Hoti; Referral KI104/18 was submitted by Enver Osaj; Referral KI105/18 was submitted by Bahtir Meziu; Referral KI106/18 was submitted by Mursel Shala; Referral KI107/18 was submitted by Haki Rushiti; Referral KI116/18 was submitted by Hafiz Gjinovci; Referral KI117/18 was submitted by Fazli Ramadani; Referral KI119/18 was submitted by Xhafer Hetemi and Referral KI125/18 was submitted by Nuhi Dibrani.

2. All of the abovementioned (hereinafter: the Applicants) are residing in the Municipality of Skenderaj.

### **Challenged decision**

3. The Applicants challenge 16 decisions of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), as follows:
  1. Fehmi Hoti- Decision Rev No. 91/2018, of 5 April 2018;
  2. Kada Gjinovci- Decision Rev No. 82/2018, of 12 April 2018;
  3. Avdie Mehmeti- Decision Rev No. 87/2018, of 3 April 2018;
  4. Hamze Fekaj- Decision Rev No. 70 /2018, of 26 March 2018 (which was served on him on 3 May 2018);
  5. Brahim Hasani - Decision Rev. No. 71/2018, of 3 April 2018;
  6. Ramadan Azemi - Decision Rev. No. 74/2018, of 11 April 2018;
  7. Hamdi Sejdiu - Decision Rev. No. 88/2018, of 26 March 2018 (which was served on him on 17 April 2018);
  8. Xhevat Hoti- Decision Rev. No. 67/2018, of 26 March 2018 (which was served on him on 18 April 2018);
  9. Enver Osaj - Decision Rev. No. 85/2018, of 5 April 2018;
  10. Bahtir Meziu - Decision Rev No. 73/2018, of 26 March 2018 (which was served on him on 7 April 2018);
  11. Mursel Shala - Decision Rev. No. 106/2018, of 12 April 2018;
  12. Haki Rushiti - Decision Rev. No. 89/2018, of 3 April 2018;
  13. Hafiz Gjinovci - Decision Rev. No. 81/2018, of 3 April 2018 (which was served on him on 5 May 2018);

14. Fazli Ramadani - Decision Rev. No. 64/2018, of 3 April 2018 (which was served on him on May 2018);
15. Xhafer Hetemi - Decision Rev No. 76/2018, of 12 April 2018 (which was served on him on 8 May 2018);
16. Nuhi Dibrani- Decision Rev. No. 86/2018, of 26 March 2018.

### **Subject matter**

4. The subject matter of the Referrals is the constitutional review of the challenged decisions, which allegedly violated the Applicants' rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

### **Legal basis**

5. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

### **Proceedings before the Constitutional Court**

6. On 25 July 2018, the Applicant Fehmi Hoti submitted the Referral to the Constitutional Court (hereinafter: the Court).
7. On 27 July 2018, the Applicants Kada Gjinovci, Avdie Mehmeti, Hamze Fekaj, Brahim Hasani, Ramadan Azemi, Hamdi Sejdiu, Xhevat Hoti, Enver Osaj, Bahtir Mziu and Mursel Shala submitted their Referrals to the Court.
8. On 30 July 2018, the Applicant Haki Rushiti submitted the Referral to the Court.
9. On 9 August 2018, the Applicant Hafiz Gjinovci submitted the Referral to the Court.
10. On 13 August 2018, the Applicant Fazli Ramadani submitted the Referral to the Court.
11. On 14 August 2018, the Applicant Xhafer Hetemi submitted the Referral to the Court.



12. On 17 August 2018, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu-Krasniqi and Bajram Ljatifi (members).
13. On the same date, in accordance with Rule 40.1 of the Rules of Procedure, the President of the Court ordered the joinder of the Referrals KI97/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 with Referral KI 96/18.
14. On 17 August 2018, the Court notified the Applicants about the registration and joinder of the Referrals and requested them to submit additional documents to the Court.
15. On 17 August 2018, the Court also notified the Supreme Court about the registration of the Referrals. On the same date, the Court submitted the Referral to the Basic Court in Mitrovica - Branch in Skenderaj to present evidence regarding the date of receipt of the challenged decisions of the Supreme Court by three (3) Applicants.
16. On the same date, the Court also requested the Applicant Avdie Mehmeti to sign the referral form and to attach additional documents. From the Applicants Hamdi Sejdiu, Enver Osaj and Bahtir Meziu requested the signature of the form, and from the last mentioned to attach additional documents.
17. On 27 August 2018, the Applicant Nuhi Dibrani submitted the Referral to the Constitutional Court.
18. On 24 September 2018, the Applicant Bahtir Meziu notified the Court in writing that his son S.M. is authorized to bring the documents and sign the form.
19. On 27 September 2018, the Applicant Avdie Mehmeti notified the Court in writing that her husband A.M. was authorized to bring the documents and to sign the form.
20. On an unspecified date, the two other Applicants signed the form at the request of the Court.
21. On 28 September 2018, the Basic Court submitted to the Court the acknowledgment of receipts indicating the dates when three (3) Applicants (Hafiz Gjinovci, Fazli Ramadani and Xhafer Hetemi) received the challenged decisions, as requested by the Court on 18 August 2018.
22. On 30 October 2018, in accordance with Rule 40.1 of the Rules of Procedure, the President of the Court ordered the joinder of the Referral KI125/18 with Referrals KI96/18 KI97/18, KI99/18, KI100/18, KI 101/18, KI102/18, KI 103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18 and KI119/18.



23. On 1 November 2018, the Court notified the Applicant Nuhi Dibrani and the Supreme Court about the registration and joinder of Referral KI125/18 with 15 (fifteen) previous Referrals.
24. On 27 December 2018, the Court sent the Referral to the Basic Court in Mitrovica - Branch in Skenderaj to present evidence regarding the date of receipt of the challenged decisions of the Supreme Court by 4 (four) Applicants (Hamze Fekaj, Hamdi Sejdiu, Bahtir Meziu and Xhevat Hoti).
25. On 10 January 2019, the Basic Court submitted to the Court the acknowledgment of receipts containing the dates when the four Applicants received the challenged decisions, as requested by the Court on 27 December 2018.
26. On 10 January 2019, J.B. in the capacity of the Director of the Association „Ngritja e Zërit“ submitted to the Court a document which, although expressly does not refer to any concrete case before the Court, reiterates the allegations and arguments contained in the Applicants' Referral.
27. On 30 January 2019, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

28. Between 17 May 2010 and 25 May 2015, the Applicants individually filed a claim with the Basic Court in Mitrovica, Branch in Skenderaj (hereinafter: the Basic Court) against the Government of the Republic of Serbia for compensation of material and not -material damage that was caused during the war between 1998 and 1999.
29. During the period 22 July 2013 - 10 February 2016, the Basic Court, by individual decisions, dismissed the Applicants' claims and declared itself incompetent to decide.
30. The Applicants filed individual appeals against the decisions of the Basic Court with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), on the grounds of essential violation of the provisions of the contested procedure. The Applicants requested that the decisions of the Basic Court be annulled and the Applicants' Referrals be declared admissible.
31. Between 16 January 2016 and 17 January 2018, the Court of Appeals rendered separate decisions by rejecting each of the Applicants' appeals and upholding the decisions of the Basic Court.
32. Each of the Applicants, individually, filed individual request for revision with the Supreme Court, alleging that there has been a violation of the provisions of the contested procedure. They requested that their requests for revision be approved, the decisions of the Court of Appeals and of the Basic Court be annulled and their legal matter be referred for reconsideration to the Basic

Court. The Applicants alleged that there are other provisions of the Law on Contested Procedure which regulate the issue of jurisdiction in their cases. In the present case, according to them, the provisions of Article 28 of the Law on Contested Procedure related to the jurisdiction of the courts should have been applied in disputes with an international element.

33. Between 26 March and 12 April 2018, the Supreme Court rendered separate decisions (as stated in paragraph 3), rejecting the request for revision of each of the Applicants as ungrounded. The main arguments of the Supreme Court in each of these decisions were as follows:

*“Taking into account the [provisions of the Law on Contested Procedure] LCP as well as the fact that by the request the respondent Republic of Serbia - Government of R.S. in Belgrade [...], in the present case it is about the legal-property dispute in the foreign state, the norms of international law apply, for which the domestic court is not competent to decide, therefore, the Supreme Court of Kosovo assesses that the Basic Court and the Court of Appeals have correctly applied the provisions of Article 18.3 and Article 39 par. 1 and 2 of the LCP, when they declared itself incompetent to adjudicate this legal matter and dismissed the claim [of the Applicants], since the court with territorial jurisdiction is the court in the territory of which is the seat of the Assembly of the Republic of Serbia, [and] the seat of the Assembly of the Republic of Serbia as a responding party is not in the territory of the Courts of the Republic of Kosovo. [...]*

*The provision of Article 28 of LCP, which the Applicants refer to, foresee the jurisdiction of domestic courts in disputes with an international (foreign) elements, cannot be applied in the present case, due to the fact that this case does not have to do with foreign natural persons nor with foreign legal persons, but with a foreign state, with which to the present moment the state of Kosovo, on which territory was caused the damage, has never been any international agreement [...] regarding the jurisdiction of the local courts for these types of disputes [...]. The allegation in the revision [of the Applicants] that in the present case we are dealing with the territorial jurisdiction is ungrounded, based on Articles 47, 51 and 61 of the LCP, because according to the assessment of the Supreme Court, these provisions do not relate to the present case [...], the lower instance courts have correctly applied the provision of Article 18.3 of the LCP, taking into account the other reasons mentioned above”.*

### **Applicant’s allegations**

34. The Applicants allege that the decisions of the Supreme Court violated their rights guaranteed by Articles: 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, Article 6 (Right to a fair trial) of the ECHR and Article 15 of the UDHR.
35. The Applicants have three main categories of allegations: (i) the application of the principle „per loci“ [*ratione loci*], which, according to the Applicants,



implies that the regular courts have competence to review the claims based on the country where the damage is caused; (ii) the obligation of the regular courts to apply international human rights standards, (iii) their right to judicial protection of rights and the right to access to justice.

36. The Applicants initially refer to the issue of territorial jurisdiction (namely the principle „*per loci*“) and the allegations that the regular courts have *“incorrectly applied the applicable law referred to the territorial jurisdiction of the Basic Court [...], since the court with territorial jurisdiction for the adjudication on legal matters, is always the court in the territory of which the crime was committed, moral and material damage! This valid legal definition and position corresponds to the interest of the injured party, the principle of economy in judicial and administrative proceedings, and in accordance with the international principle per loci, the resolution of claims based on the place where the crime was committed”*.
37. The Applicants further refer to some examples of the international case law whereby, according to them, the Second World War victims were allowed to *“file individual indictments before the national courts for compensation of damage caused by Germany”*. In this regard, they specify that in the cases of Greece, Italy and the United States of America, the individuals were afforded the opportunity to seek compensation for the *“damage caused by Germany during World War II in accordance with international principle “per loci.”*
38. The Applicants, referring to Article 21 paragraph 1 of the Constitution, claim that the regular courts *“did not apply international advanced human rights standards. One of the standards is to allow the injured party to initiate the issue of compensation for moral and material damage caused as a result of direct action by the Serbian authorities”*.
39. The Applicants also allege that *“The obligation to apply Geneva Conventions [...] is also foreseen by the International Humanitarian Law of Kosovo”*. According to the Applicants, the regular courts have violated the constitutional provisions because they have not applied the provisions of international conventions as a category of domestic legal order.
40. The Applicants, referring to Article 54 of the Constitution, also state that *“the right to judicial protection of rights, the right to access to justice at the national level and the institutional guarantees for the protection of human rights have been denied”*.
41. The Applicant Nuhi Dibrani (KI125/18) has also attached a document, requesting to return to the previous situation as to the deadline for filing a referral with the Constitutional Court. He reasoned that since he was not notified, the deadline for filing the referral to the Court has expired. He emphasizes that *“[...] he was not informed about the possibility of addressing the Constitutional Court [...] the legal deadline has expired for 14 days”*.



42. Finally, the Applicants request the Court to annul the decisions of the Supreme Court, of the Court of Appeals and of the Basic Court and remand the case for reconsideration to the Basic Court in Mitrovica - Branch in Skenderaj.

### **Relevant legal provisions**

#### ***LAW NO. 03/L-006 ON CONTESTED PROCEDURE***

##### *Article 18*

*[...]*

*18.3 If the court during all stages of proceeding determines that the local court is not competent, it will be declared incompetent, all the proceeding will be nullified and the claim will be dropped. However, such an action will not be taken if the jurisdiction of the court is dependent on the approval of the defendant and the defendant has already given his or her permission.*

*[...]*

##### *Article 28*

*28.1 The rules of international law apply regarding the competence of our courts for settlement of disputes of foreign citizens that enjoy immunity, foreign countries and international organizations.*

*28.2 The local court is competent to settle a dispute when its competence to settle a dispute which includes international elements is expressly determined by law or international contract.*

*28.3 If by our law or international contract there are no decisive provisions for competence of court for a certain type of disputes, the local court is competent to proceed for such disputes even when its competence derives from the provisions of this law on territorial jurisdiction of the local court.*

##### *Article 39*

*39.1 In the adjudication of disputes against Kosovo, a self-governing unit or any other territorial organization, the general territorial jurisdiction is vested in the court within whose territory is the headquarters of its assembly.*

*39.2 In the adjudication of the disputes against other legal persons, the general territorial jurisdiction is vested in the court within whose territory their headquarters is registered.*

##### *Article 47*

*47.1 In the adjudication of disputes related to non-contractual responsibility for the damage, the competency, apart from the court with general territorial jurisdiction, is also with the court in whose territory it was committed the act of damage or the court in whose territory the consequence from the damage has appeared.*

## Article 51

*In the adjudication of the matter of dispute against a legal person whose unit is not within the territory of its headquarter, and if the dispute results from the legal relationship of the unit of the legal person, apart from the court with general territorial jurisdiction, it is also competent the court in whose territory the unit of the legal person is located.*

## Article 61

*The disputes with the physical or legal person with a residence or headquarters out of our country regarding the obligations created in Kosovo or that need to be fulfilled in Kosovo, the claim may be filed at the court in whose territory is situated his or her permanent representative office for Kosovo or the headquarters of the body trusted to execute such duties.*

## Admissibility of the Referral

43. The Court will first examine whether the Referrals have fulfilled the admissibility requirements established in the Constitution and further specified in the Law, and foreseen in the Rules of Procedure.

44. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

*1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*(...)*

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

45. The Court further refers to the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which foresee:

### Article 48

#### [Accuracy of the Referral]

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

### Article 49

#### [Deadlines]

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

46. In addition, the Court also refers to the Rules of Procedure, namely paragraphs 1 (c) and (2) of Rule 39 [Admissibility Criteria], which define the following:

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

*[...]*

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

*“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*

### **Regarding 15 Applicants**

47. The Court finds that the 15 Applicants (not including Nuhi Dibrani, whose case will be dealt with separately) are authorized parties who challenge an act of a public authority after exhaustion of all legal remedies. The Applicants have also specified the rights and freedoms which have allegedly been violated in accordance with Article 48 of the Law and have submitted the Referral in accordance with the deadline set out in Article 49 of the Law and 39.1 (c) of the Rules of Procedure.
48. In addition, the Court examines whether the Applicants' Referral meets the admissibility requirement foreseen in Rule 39 (2) of the Rules of Procedure. In this regard, the Court recalls that the Applicants allege that the regular courts violated certain rights protected by the Constitution, the ECHR and the UDHR, with particular emphasis on the right to fair and impartial trial and the right to judicial protection of rights.
49. In this regard, the Court notes that the Applicants allege that the regular courts erroneously interpreted the law in force when referring to the territorial jurisdiction of the Basic Court. They further claim that the court in which territory the damage is caused is the competent court to adjudicate their cases. Consequently, according to the Applicants, they were denied *“the right to judicial protection and access to justice”*.
50. The Court considers that the Applicants' allegations, in substance, relate to the interpretation by the regular courts of the relevant legal provisions that regulate their territorial jurisdiction, namely the competence to deal with the claims of the Applicants.
51. The Court emphasizes its general view that correct and complete determination of factual situation, as well as relevant legal interpretations, in essence, fall within the jurisdiction of the regular courts. The role of the Constitutional Court is to ensure that the standards and rights guaranteed by the Constitution are respected and consequently it cannot act as a “fourth instance court” (see: *mutatis mutandis*, the European Court of Human Rights



Judgment 16 September 1996, *Akdivar v. Turkey*, No. 21893/93, paragraph 65, see: also *mutatis mutandis*, case of the Constitutional Court, KI86/11, Applicant *Milaim Berisha*, Resolution on Admissibility of 5 April 2012, paragraph 33).

52. In the present case, the Court notes that the Supreme Court considered the Applicants' allegations regarding the interpretation by the Court of Appeals and the Basic Court of the relevant provisions legally related to the competence to adjudicate in the cases of the Applicants.
53. In reviewing the Applicants' allegations, the Supreme Court reasoned that the Basic Court and the Court of Appeals have correctly applied the provisions of the Law on Contested Procedure when they found that they had no jurisdiction to adjudicate in these court cases. Therefore, the Supreme Court rejected the Applicants' allegations, reasoning that the general territorial jurisdiction is in the court in the territory of which is the seat of the Assembly of the Republic of Serbia which is not in the territory of the Kosovo courts.
54. Therefore, in some of its cases (see, for example, Decision in Rev. No. 91/2018), the Supreme Court, *inter alia*, reasoned:

*"[...] according to the provision of Article 28.2 of the LCP, when it comes to disputes with a foreign element, the domestic court is competent only if this international competence derives expressly from an international agreement or by the law itself [...] Article 39.1 of LCP foresees that "for the adjudication of disputes against Kosovo [...] of the general territorial jurisdiction is the court in which territory is the seat of its assembly. While in paragraph 2 it is foreseen 'in the adjudication of the disputes against other legal persons, the general territorial jurisdiction is vested in the court within whose territory their headquarters is registered.' Thus, also by provision of Article 54.1 of the Law on the conflict resolution of the law with the provisions of other states provides that in the legal-property disputes the jurisdiction of the domestic court exists if the property of the respondent or the thing sought by lawsuit is located in our country".*
55. The Supreme Court further specified that in the case of the Applicants *"we are dealing with a foreign state, with which until now the state of Kosovo in the territory of which the damage was caused has not concluded any international agreement regarding the jurisdiction of the domestic courts for these kinds of disputes"*.
56. The Court considers that the findings of the Basic Court, the Court of Appeals and of the Supreme Court were reached after a detailed examination of all the arguments and interpretations presented by the Applicants. In this way, the Applicants were given the opportunity to present at all stages of the procedure the arguments and legal interpretations they consider relevant to their disputes.

57. Therefore, the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair and that the allegation of arbitrary legal interpretation by the regular courts cannot be substantiated.
58. With regard to the Applicants' allegations as to "*their right to judicial protection and access to justice*", the Court emphasizes the case law of the European Court of Human Rights (ECtHR), on which it is obliged to refer to under Article 53 of the Constitution. The Court notes that the ECtHR has in some cases noted procedural barriers imposed by the principle of sovereign state immunity - as one of the fundamental principles of international public law - in relation to judicial proceedings that may be conducted against a state in the domestic courts of another state (see, *mutatis mutandis*, *Jones and Others v. United Kingdom*, Judgment of 14 January 2014, *Al-Adsani v. United Kingdom*, Judgment of 21 November 2001).
59. In addition, in the case *Al-Adsani v. The United Kingdom*, the ECtHR argued as follows: "*The right of access to court may be subject to limitations, unless the essence of the very right is impaired. Such limitations must pursue a legitimate aim and be proportionate [...] The recognition of sovereign state immunity in civil proceedings follows the legitimate aim of respecting the international law [...]. As far as proportionality is concerned, the Convention should, as far as possible, be interpreted in accordance with other rules of international law, including those relating to the immunity of States. Thus, the measures taken by the state which reflect the general rules of international law on the immunity of States cannot, in principle, be regarded as a disproportionate limitation of the right of access to the court*". Such an attitude, as far as concerns the tension between the principle of sovereign immunity of states and the right to access to justice (court), was emphasized by the International Court of Justice (see, for example, *Germany v Italy; Greece as an intervening party*, Judgment of 3 February 2012).
60. In the light of the foregoing arguments, the Court considers that it is important to emphasize the fact that the regular courts of Kosovo did not deal with, namely, did not adjudicate regarding the Applicants' right to seek compensation of damage, but only with respect to the territorial jurisdiction of the courts of Kosovo to conduct proceedings against another state.
61. Referring to the Applicants' allegations regarding the application of the Geneva Convention in their court cases, the Court notes that the Applicants have only referred to this Convention, but did not provide further arguments in relation to this allegation.
62. The Court emphasizes its general view that the mere fact that the Applicants do not agree with the outcome of the decisions of the Supreme Court, as well as mentioning of articles of the Constitution or international instruments, are not sufficient to build a reasoned allegation of constitutional violations (See: *mutatis mutandis*, case of the Constitutional Court, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, KI136/14, paragraph 33).



63. The Court also notes that the presented facts and the Applicants' allegations are almost identical to some of the earlier Referrals, where the Court found that they were inadmissible, as manifestly ill-founded on constitutional basis (see: *mutatis mutandis*, cases of the Constitutional Court, KI73/17 KI78/17 and KI85/17, *Istref Rexhepi and 28 others*, Resolution on Inadmissibility of 23 October 2017 and cases KI KI97/17, KI99/17, KI15/17 and KI121/17 *Mala Mala, Ali Salihu, Nurija Beka and Xhevat Xhinovci*, Resolution on Inadmissibility of 10 January 2018).
64. In sum, the Court considers that the Applicants' referrals do not prove that the proceedings before the regular courts committed a violation of their rights guaranteed by the Constitution, namely Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, as well as Article 6 of the ECHR and Article 15 of the UDHR.

### ***Regarding the Applicant Nuhi Dibrani***

65. The Court considers that the Applicant Nuhi Dibrani (KI125/18) is an authorized party and has exhausted available legal remedies.
66. The Court recalls that the Applicant challenges the constitutionality of Decision Rev. No. 86/2018 of the Supreme Court of 26 March 2018, while he submitted Referral KI125/18 to the Court, on 27 August 2018.
67. Regarding the delay in filing the Referral, the Court recalls that the Applicant requests a return to the previous situation, on the grounds that the deadline for submitting the Referral to the Court expired because he was not notified, however, for this referral he did not provide arguments or accompanying documents.
68. Therefore, the Court finds that the Applicant did not substantiate his Referral regarding the restitution of the time limit in accordance with Article 50 of the Law and, accordingly, his Referral should be rejected.
69. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt within a reasonable time and that past decisions are not continually open to constitutional review. (See: case *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECHR, Decision of 25 August 2005, and see also: the Constitutional Court Case no. KI140/13, *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24).
70. Based on the foregoing, it results that the Applicant's Referral (KI125/18) of the Applicant Nuhi Dibrani was submitted out of the legal deadline foreseen in Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure and as such is inadmissible.



71. In conclusion, the Court finds that:

- i) with regard to all 15 Applicants, their Referrals (KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18) are manifestly ill-founded on constitutional basis and are to be declared inadmissible in accordance with Article 48 of the Law and Rule 39 (2) of the Rules of Procedure;
- ii) with regard to Applicant Nuhi Dibrani (KI125/18), his Referral was submitted out of the legal deadline provided by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and as such is inadmissible.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Articles 48, 49 and 50 of the Law and Rules 39 (1) (c) and (2) of the Rules of Procedure, on 30 January 2019, unanimously

### **DECIDES**

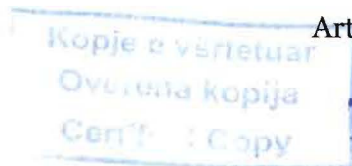
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bekim Sejdiu

Arta Rama-Hajrizi



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