



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO



Newsletter

January — June 2019

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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.

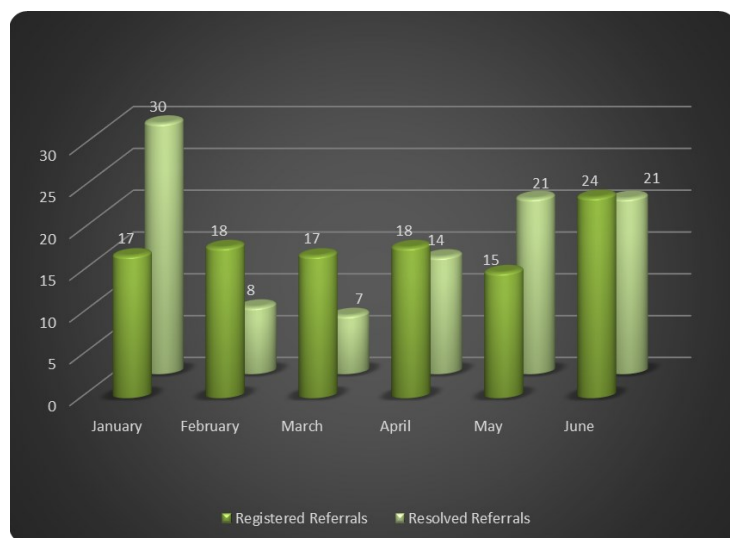
The Court is currently composed of 9 (nine) national judges.

Status of cases

During the six-month period: 1 January – 30 June 2019, the Court has received 109 Referrals and has processed a total of 276 Referrals/Cases. A total of 101 Referrals were decided or 38% of all available cases.

During this period, 72 decisions were published on the Court's webpage.

*The dynamics of received referrals by month
(1 January - 30 June 2019)*



The following are 8 judgments that the Court rendered during the six month period, 1 January - 30 June 2019:

- Judgment in Case KI 01/18, submitted by: Gani Dreshaj and the Alliance for the Future of Kosovo (AAK). The filed referral requested the constitutional review of Judgment A.A. –U.ZH No. 64/2017 of the Supreme Court of Kosovo, of 26 December 2017.
- Judgment in Case KI 48/18, submitted by: Arban Abrashi and the Democratic League of Kosovo (LDK). The filed referral requested the constitutional review of Decision AA. No. 52/2017 of the Supreme Court of the Republic of Kosovo of 25 November 2017 and Judgment A.A. U.ZH. No. 62/2017 of the Supreme Court of the Republic of Kosovo of 7 December 2017.
- Judgment in Case KO 162/18, submitted by: The President of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of the amendment of the Constitution of the Republic of Kosovo, proposed by 80 (eighty) deputies of the Assembly of the Republic of Kosovo and submitted by the President

of the Assembly of the Republic of Kosovo on 24 October 2018, by letter No. 06/2156/1156-DO.

- Judgment in Case KO 157/18, submitted by: The Supreme Court of the Republic of Kosovo. The filed referral requested the constitutional review of Article 14, paragraph 1.7 of the Law No. 03/L-179 on Red Cross of the Republic of Kosovo.
- Judgment in Case KI 87/18, submitted by: Insurance Company „IF Skadeforsikring“. The filed referral requested the constitutional review of Judgment E. Rev. No. 27/2017 of the Supreme Court of 24 January 2018.
- Judgment in Case KI 31/18, submitted by: Municipality of Peja. The filed referral requested the constitutional review of Judgment E. Rev. No. 20/2017 of the Supreme Court of the Republic of Kosovo of 20 November 2017.
- Judgment in Case KO 171/18, submitted by: The Ombudsperson. The filed referral requested the constitutional review of articles 2, 3 (paragraph 1, subparagraphs 2, 3 and 4), 4 (paragraph 1), 6, 7 (paragraph 1, subparagraphs 2, 3 and 4), 11 (paragraph 3), 18, 19 (paragraphs 5, 6, 7 and 8), 20 (paragraph 5), 21, 22, 23, 24 and 25 (paragraphs 2 and 3) of Law No. 06/L-048 on Independent Oversight Board for Civil Service in Kosovo.
- Judgment in Case KO 43/18, submitted by: Albulena Haxhiu, Driton Selmanaj and thirty other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Law No. 06/L-145 on the Duties, Responsibilities and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia.

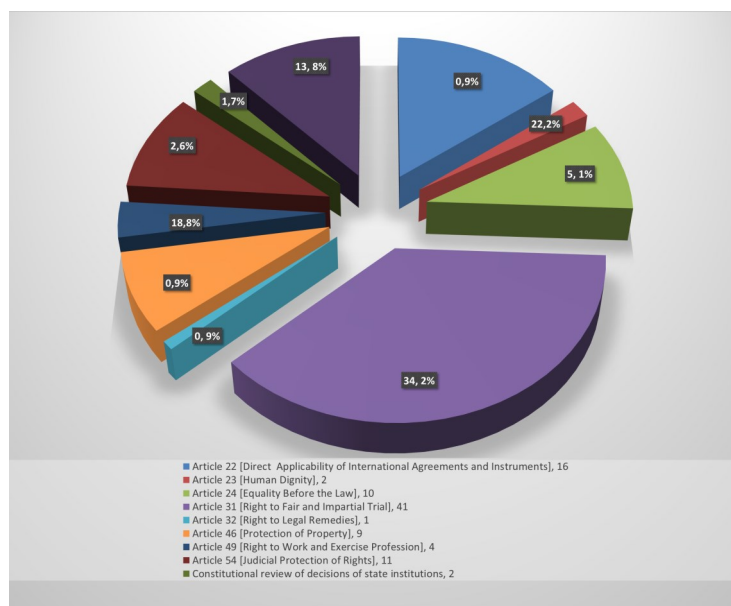
Types of alleged violations

The types of alleged violations in the 109 referrals received during the six-month period: 1 January - 30 June 2019, are the following:

- Article 22 [Direct Applicability of International Agreements and Instruments], 16 cases or 14,7%;
- Article 23 [Human Dignity], 2 cases or 1,8%;
- Article 24 [Equality Before the Law], 10 cases or 9,2%;
- Article 31 [Right to Fair and Impartial Trial], 41 cases or 37,6 %;
- Article 32 [Right to Legal Remedies], 1 case or 0,9%;

- Article 46 [Protection of Property], 9 cases or 8,3%;
- Article 49 [Right to Work and Exercise Profession], 4 cases or 3,7%;
- Article 54 [Judicial Protection of Rights], 11 cases or 10,1%;
- Constitutional review of decisions of state institutions, 2 cases or 1,8 %;
- Other violations, 13 cases or 11,9%;

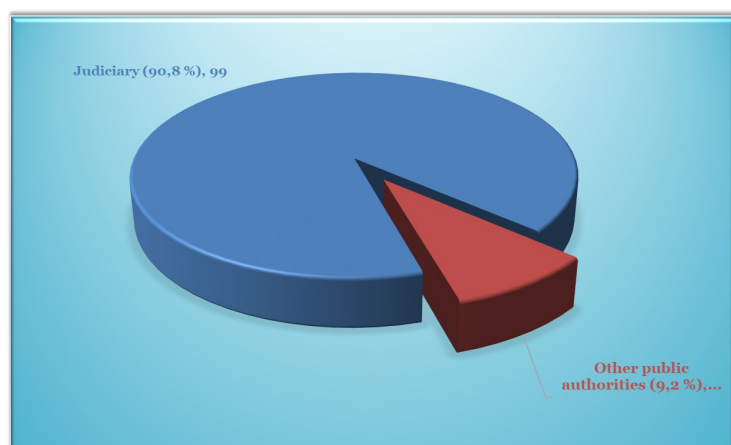
*Alleged violations by type
(1 January - 30 June 2019)*



Alleged violators of rights

- 99 or 90,8 % of Referrals refers to violations allegedly committed by court's decisions;
- 10 or 9,2 % of Referrals refers to decisions of other public authorities;

*Alleged violators of rights
(1 January - 30 June 2019)*

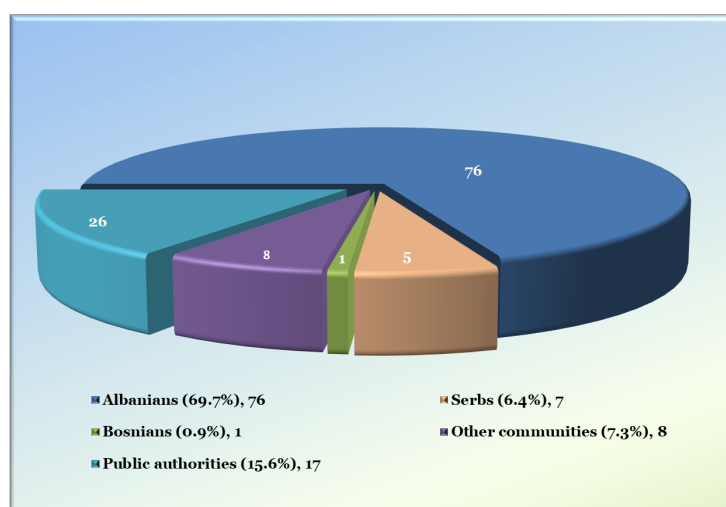


Access to the Court

The access of individuals to the Court is the following:

- 76 Referrals were filed by Albanians, or 69,7%;
- 7 Referrals were filed by Serbs, or 6,4%;
- 1 Referral was filed by Bosnians, or 0,9%;
- 8 Referrals were filed by other communities, or 7,3%;
- 17 Referrals were filed by other public authorities (legal persons), or 15,6%;

*Ethnic structure of the Applicants
(1 January - 30 June 2019)*



Sessions and Review Panels

During the six-month period: 1 January - 30 June 2019, the Constitutional Court held 21 plenary sessions and 84 Review Panels in which the cases were resolved by decisions, resolutions and judgments.

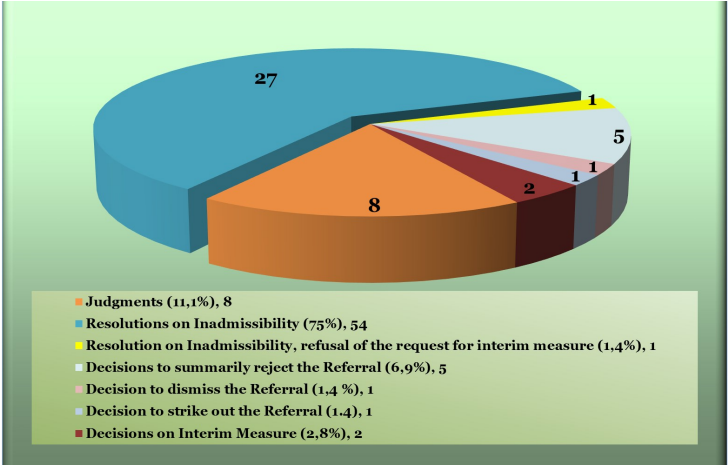
During this six-month period, the Constitutional Court has published 72 decisions.

The structure of the published decisions is the following:

- 8 Judgments (11,1%);
- 54 Resolutions on Inadmissibility (75%);
- 1 Resolution on Inadmissibility, refusal of the request for interim measure (1,4%);
- 5 Decisions to summarily reject the Referral (6,9%);
- 1 Decision to dismiss the Referral (1,4%);

- 1 Decision to strike out the Referral (1,4%);
- 2 Decisions on Interim Measure (2,8%);

Structure of decisions
(1 January - 30 June 2019)



10 January 2019



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, and the Judge of the Constitutional Court, Mr. Nexhmi Rexhepi, received in an introduction meeting the new ambassador of the United States of America in Kosovo, Mr. Philip Kosnett. After wishing success on his new office, President Rama-Hajrizi initially informed Ambassador Kosnett with the work performed so far by the Constitutional Court of Kosovo, and with the challenges that this institution faced during the previous year, in particular as regards its functioning and decision-making.

Last year's simultaneous leaving of four judges from the first generation appointed to the Constitutional Court and the loss of the quorum needed for decision making were the main challenges which President Rama-Hajrizi singled out in the meeting. She emphasized that since its establishment in 2009, the Constitutional Court only now has in its composition only national judges and on this occasion, she expressed the gratitude for the precious contribution and work of the international judges who have left the Court.

During the conversation, President Rama-Hajrizi continued discussing recent developments in the constitutional judiciary of Kosovo, possibilities of further consolidating the independence of the judicial power and necessary legislative reforms in the function of strengthening rule of law. She expressed gratitude and appreciation for the assistance that the US Government have provided so far to the Constitutional Court but also to other institutions in the country through projects funded by USAID Mission in Kosovo.

After thanking President Rama-Hajrizi for the hospitality, Ambassador Kosnett confirmed his support for the independence in the work of the

Constitutional Court and expressed his commitment to deepening the relationship of cooperation between the two friendly nations, in all areas of mutual interest.

5 March 2019

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting a judge of the Albanian origin of the District Court of South Australia in Adelaide, Mr. Rauf Soulio, who also serves as Honorary Consul of the Republic of Kosovo and Republic of Albania in Australia. The judicial and constitutional system in the Republic of Kosovo, the role and function of the Constitutional Court in the country as well as the challenges in its decision-making, were among the topics discussed at the joint meeting.

President Rama-Hajrizi made a short description of the background of the establishment of the Constitutional Court, emphasizing the important role that international partners had in its



operationalization, as well as the valuable contribution of former international judges of the Court in establishing the case law according to the European standards of constitutional judiciary.

Judge Soulio, after thanking President Rama-Hajrizi for her hospitality, expressed his willingness to establish cooperative relations with the Constitutional Court of Kosovo through exchange of professional experiences and realization of study visits of the Albanian-Australian students in the field of justice.

21 March 2019

The Constitutional Court of the Republic of Kosovo in cooperation with the Council of Europe Office in Prishtina and with the support of the Norwegian Embassy in Kosovo organized a joint workshop on the topic: *"Improving the Protection of European Human Rights Standards by the Constitutional Court"*, which



was held in Swiss Diamond Hotel in Prishtina. The workshop marked the commencement of the project supported by the Council of Europe Office in Prishtina and the Norwegian Embassy in Kosovo, which aims at advancing the professional capacities of the Constitutional Court with a view of having a more effective application of European standards in the examination of individual complaints and in the communication with the public.

The President of the Constitutional Court of Kosovo, Mrs. Arta Rama-Hajrizi, the Head of the Council of Europe Office in Prishtina, Mrs. Isabelle Servoz-Gallucci, the Ambassador of Norway in Kosovo, Mr. Per Strand Sjaastad, and the Head of South-eastern Europe and Turkey Unit of the Council of Europe and the coordinator of this project, Mr. Daniel Schmidt, addressed the participants of the workshop.

After expressing her gratitude for the continued support provided to the Constitutional Court by the Council of Europe Office in Prishtina and the Norwegian Embassy, President Rama-Hajrizi stated, among others, that *"this project is expected to help even more the Constitutional Court of Kosovo to fulfil its mission in the protection and application of the constitutionality in the country, especially now that we are entering the first decade of the work and after the leaving of the international judges and advisors"*.



The independence of the constitutional courts and regional courts in the consideration of human rights related cases was one of the topics discussed in the course of the workshop, where among the panel speakers was Mr. Bajram Ljatifi, the Deputy-President of the Constitutional Court of Kosovo.

26 March 2019

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting the Minister of Justice of the Republic of Albania, Ms. Etilda Gjonaj. The work of the Constitutional Court to date, the challenges faced in the selection of new judges and the departure of international judges last year, were only some of the issues that President Rama-Hajrizi discussed at the joint meeting with Minister Gjonaj.



She highly appreciated the progress Albania has made in reforming the justice system through the Vetting process, underlining the importance of the appointment of judges and prosecutors with integrity for the consolidation of the rule of law in each country.

President Rama-Hajrizi further said that, same as all the state institutions of both countries, the constitutional courts of Kosovo and Albania have cultivated an excellent cooperation over the years, always having as the guideline the European standards of the constitutional justice.

Minister Gjonaj reiterated on her part the willingness of the Albanian state to continue its support for all the institutions and for all the processes that Kosovo is going through, as well as to strengthen the comprehensive relations of cooperation, in particular in the field of justice. Following the meeting, both sides exchanged mutual ideas and experiences regarding the judicial systems of both countries, with particular focus on the independence of the judiciary as well as the selection practices of constitutional judges.

8 April 2019

Primary school students from different cities of the Republic of Kosovo visited the Constitutional Court on the occasion of marking the 11th anniversary of the Constitution of Kosovo, adopted on 9 April 2008. They were received in a meeting by the President of the



Constitutional Court, Mrs. Arta Rama-Hajrizi, who welcomed and briefly notified them about the important function and role of the Constitutional Court on the rule of law in the country, as well as in the protection of human rights and freedoms according to the European standards.

President Rama-Hajrizi further notified the primary school students about the organizational structure of the Court and its composition, the election process and the mandate of the constitutional judges, as well as the procedures of reviewing the submitted referrals.

She also spoke about the process of drafting the new Constitution of the Republic of Kosovo, and the importance of this document not only for the protection of human rights in the country, but also for all processes of democratic development of our society. After answering the numerous questions of the students, at the end of the meeting President Rama-Hajrizi gave them a copy of the Constitution, wishing that all of us together respect and implement every its article in order to ensure a better future for the new generations.

The students' visit took place under the joint organization of the Constitutional Court of Kosovo and the Transformational Leadership Program (TLP) of the United States Agency for International Development (USAID).

17 April 2019



The fourth-year students of the Faculty of Law of "Ukshin Hoti" University in Prizren, accompanied by the University Professor and former Deputy President of the Constitutional Court of Kosovo, Prof. Dr. Kadri Kryeziu visited the Constitutional Court.

The students were welcomed in a meeting by the Chief Legal Advisor of the Constitutional Court, Mr. Nexhat Kelmendi, and the Director of the Communication and Information Office (CIO), Mr. Veton Dula.

During the meeting, advisor Kelmendi initially informed the students about the function, responsibilities and the role that the Constitutional

Court of Kosovo has in relation to other authorities of the state power and the regular courts in the country. Advisor Kelmendi made a brief presentation regarding the parties authorized by the Constitution to file a referral with the Constitutional Court, whereby for each of the applicants he made a comparative elaboration of the decisions rendered so far by the Court.

He also discussed about the judgments of the Constitutional Court that had the greatest impact on the rule of law and protection of the constitutionality in the country, while underlining the constitutional obligation for the protection of human rights and fundamental freedoms in harmony with the court decisions of the European Court on Human Rights.

For the co-operation of the Constitutional Court with the Venice Commission, the submission of requests from and to the Forum of the Venice Commission, as well as the total number of requests submitted so far, the students were informed in more detail by the Director of CIO and at the same time the Liaison Officer of the Constitutional Court with the Venice Commission, Mr. Veton Dula.

18 April 2019



The Constitutional Court was visited by a group of students at the Faculty of Law of the College "AAB" in Prishtina .

The students were received in a meeting by the Senior Legal Advisor of the Constitutional Court, Mr. Bardh Bokshi and the Director of the Communication and Information Office (CIO), Mr. Veton Dula.

Advisor Bokshi initially notified the students more closely with the organizational structure and the composition of the Court, the procedures for the selection and appointment of constitutional judges, the decision-making process of the Court, as well as the competences and responsibilities the Constitutional Court enjoys based on the Constitution. During the meeting, Advisor Bokshi highlighted some of the most important judgments of the Court in the area of violations of human rights by public authorities, the conflict of constitutional competences between various state authorities, and the maintenance of functional independence of the independent institutions.

He also discussed the importance and constitutional obligation to implement the case law of the European Court on Human Rights in the decision-making of the Constitutional Court as well as of the courts of other instances of the regular judiciary in the Republic of Kosovo. The students expressed their interest to be informed in more detail about the implementation of

the European Convention on Human Rights, the process of filing referrals with the Court, the nature of the submitted referrals, the length of the case review, and the treatment of media and public questions about the cases under consideration.

22 April 2019



A delegation of judges and advisors of the Constitutional Court of the Republic of Kosovo, led by the President of the Court, Mrs. Arta Rama-Hajrizi, stayed for a several-day working visit in Washington, between 14 and 22 of April 2019.

During the stay in the US capital, the delegation of the Constitutional Court visited the US District Court for the District of Columbia (DC), the DC District Court of Appeals and the Supreme Court of the United States, where it was also able to participate in the presentation and oral argument of the case, *“United States v. Davis”*.

For the duration of their stay in Washington, the judges and advisors of the Constitutional Court of Kosovo also visited the Federal Judicial Center and the Administrative Office of the United States Courts to learn more about the role of the Administrative Office, judicial ethics in the United States, as well as the relation of the federal judiciary with the media and the public.

After visiting the USAID’s Bureau for Europe and Eurasia, the stay of the delegation of the Constitutional Court in Washington was concluded with a visit to the Faculty of Law of the American University, where among other things, the constitutional law and the theories of constitutional interpretation, as well as the interpretation of admissibility criteria in the selection of cases for review were discussed.

The visit of the delegation of the Constitutional Court to the US was made possible with the support of USAID Justice System Strengthening Program in Kosovo (JSSP).

16 May 2019

A delegation of the judges of the Constitutional Court of the Republic of Croatia headed by the President of this Court, Mr. Miroslav Šeparović, paid a working visit to the Constitutional Court of the Republic of Kosovo. The Croatian delegation was received by the President of the Constitutional Court of Kosovo, Mrs. Arta Rama-Hajrizi and the Deputy President of



the Court, Mr. Bajram Ljatifi. During the meeting that took place in a cordial and friendly atmosphere, President Rama-Hajrizi informed the guests about the up to date work of the Constitutional Court, with the process of renewal the composition of constitutional judges last year, as well as successful overcome of challenges following the replacement of the former international judges with local judges. President Rama-Hajrizi thanked her Croatian counterpart, Mr. Šeparović, for the support that the Constitutional Court of Croatia has consistently offered to the Constitutional Court of Kosovo in its efforts to join international organizations as well as to build the professional capacities of its officials through joint projects for exchange of experience.

She pledged to intensify the cooperation relations between the two counterpart courts, underlining the importance of mutual cooperation, particularly in the field of human rights protection and harmonization of the case law with that of the European Court of Human Rights. After thanking President Rama-Hajrizi for hospitality, President Šeparović made a general description of the functioning of the constitutional judiciary in the Republic of Croatia and confirmed the firm will to continue cooperation between the two courts in all areas of mutual interest.



After the meeting, the judges of the two constitutional courts held a joint workshop on the topics: *“The competence of the Constitutional Court regarding the review of International Agreements”*, *“Collective Agreements before the Constitutional Court”* and *“Election disputes from the viewpoint of constitutional adjudication”*.

the European Convention on Human Rights, the process of filing referrals with the Court, the nature of the submitted referrals, the length of the case review, and the treatment of media and public questions about the cases under consideration.

21 May 2019



First-year students of the Faculty of Law of the University of Prishtina “Hasan Prishtina” visited the Constitutional Court and were received in the meeting by the Judge of the Court, Mr. Bekim Sejdiu and Senior Legal Advisor, Mr. Bardh Bokshi. During the conversation with students, Judge Sejdiu focused his discussion mainly on the role of the Constitutional Court in the protection of constitutionality in the country and in guaranteeing the functioning of state bodies in harmony with their responsibilities and their constitutional obligations.

The procedures applied in the review of constitutional submissions, the process and stages of their review, the selection of review panels of judges and the manner of decision-making were also the topic of presentation by Judge Sejdiu. Advisor Bokshi notified the students in more detail about some of the most important decisions of the Court and the impact they had on the establishment of the constitutional case law in the country.

The relationship with regular courts, the implementation of the Constitutional Court’s decisions by other institutions, as well as the admissibility criteria of the Applicant’s referrals, were issues for which the future lawyers expressed their interest following the meeting.

27 May 2019



The Constitutional Court of the Republic of Kosovo in cooperation with the Academy of Justice of the Republic of Kosovo organized a joint workshop with the topic “*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 workshop aimed at informing young judges of Kosovo, with the authority and role of the Constitutional Court in relation to the

regular judiciary as well as with other institutions in the country, for which they were informed more closely by the Chief Legal Advisor of the Court, Mr. Sevdail Kastrati. The procedures for submitting and reviewing the cases, addressing the individual complaints against the decisions of the regular courts and the right of referral of cases under consideration by the regular courts in the Constitutional Court through incidental (concrete) control, were just some of the topics on which advisor Kastrati focused his presentation. The review of referrals relating to the excessive length of judicial proceedings by the regular judiciary, time limits for consideration of cases in the Constitutional Court and addressing cases with priority, especially when referrals are filed by the public authorities, were some of the issues for which young judges expressed their interest to be informed in more detail.

With regard to the cooperation between the Constitutional Court of Kosovo and the Venice Commission, the guests were informed in more detail by the Director of the Communication and Information Office, Mr. Veton Dula, at the same time the liaison officer of the Constitutional Court with the Venice Commission.

27 May 2019



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting the former Judge of the European Court of Human Rights (ECtHR) from North Macedonia and former Judge of the Constitutional Court of this country, Ms. Mirjana Lazarova – Trajkovska. Engaged in a capacity of the expert within the project supported by the Office of the Council of Europe in Prishtina and the Norwegian Embassy in Kosovo, Ms. Lazarova – Trajkovska stayed for one-week working visit to the Constitutional Court, for the purpose of exchanging personal experience as a former judge of the ECtHR and for implementing the best practices of work by this institution, together with the judges and the junior advisors of the Court.



During the conversation with Ms. Lazarova-Trajkovska, President Rama-Hajrizi emphasized the consolidation of the case law of the Constitutional Court, always having as a guideline the case law of the ECtHR, the excellent relations of cooperation with the constitutional courts of the region and European countries, as well as in ongoing efforts being made to advance the quality of the decision-making process of the Court.

President Rama-Hajrizi, thanked in particular the Office of the Council of Europe for providing support to the Constitutional Court over the years through various projects for professional capacity building, including the recent project that started to be implemented in March this year, through which is aimed the more effective implementation of the European standards in dealing with individual constitutional complaints and more efficient communication with the public.

6 June 2019



The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting the Ombudsperson of the Republic of Albania, Ms. Erinda Ballanca, accompanied by her counterpart in Kosovo, Ms. Hilmi Jashari.

After expressing her welcome, President Rama-Hajrizi informed Ms. Ballanca with the recent achievements Kosovo has made in the area of constitutional justice, as well as with the challenges faced in the work of the Constitutional Court last year after the simultaneous leaving of four judges, two of them international. She emphasized excellent relations with the counterpart institutions in the region, particularly with the Constitutional Court of Albania, as well as ongoing efforts being made to consolidate the professional capacities of the Court based on the standards represented by the European Court of Human Rights.

The need for inter-institutional cooperation between the Republic of Kosovo and the Republic of Albania for the necessary amendments to the legal framework was also highlighted in the meeting, in order to deepen

further reforms in the judicial system of both countries and to adopt European practices for the protection of human rights. Both sides also underlined the importance of respecting the separation of powers and maintaining the functional independence of the courts and independent institutions as an essential precondition for the functioning of constitutional democracy in each country.

7 June 2019



The Constitutional Court of the Republic of Kosovo, in cooperation with the Office of the Council of Europe in Prishtina, organized a joint workshop on the topic: *“European Human Rights Standards on reasonable length of proceedings”*, which was held at “Hotel Garden” in Prishtina. The concept of reasonable length in the processing of requests, viewed from the perspective of the case law of the European Court of Human Rights, the most frequent reasons for delays in the court proceedings, preventive and compensatory mechanisms in cases of the lengthy proceedings, and the European human rights standards on the reasonable length of the proceedings, were just some of the topics discussed at the workshop.

The panelists and main speakers in the organized workshop were: Mr. Bajram Ljatifi, Deputy President of the Constitutional Court of Kosovo, Mr. Miodrag Đorđević, Deputy President of the Supreme Court of Slovenia, Ms. Maria Filatova, former lawyer at the European Court of Human Rights and Ms. Mirela Bogdani, lecturer at the Faculty of Law of the University of Tirana.

The workshop marks the next activity within the framework of the project supported by the Office of the Council of Europe in Prishtina and the Norwegian Embassy in Kosovo, aiming at advancing the professional capacities of the Constitutional Court, with a view to more effective implementation of the European standards in dealing with individual complaints and communication with the public.



Judgment

KI 48/18

Applicant

Arban Abrashi and the Democratic League of Kosovo (LDK)

Request for constitutional review of Decision AA. No. 52/2017 of the Supreme Court of the Republic of Kosovo of 25 November 2017 and Judgment A.A. U.ZH. No. 62/2017 of the Supreme Court of the Republic of Kosovo of 7 December 2017

Referral KI48/18 was submitted by Mr. Arban Abrashi and the Democratic League of Kosovo. Mr. Arban Abrashi was a candidate for Mayor of the Municipality in the local elections of 2017 and before this Court appeared in the capacity of an individual, namely a natural person; whereas, the Democratic League of Kosovo was the political entity through which Mr. Arban Abrashi competed for Mayor of the Municipality of Prishtina and before this Court appeared as a political entity, namely a legal person. The Applicants, in essence, alleged that the Supreme Court, but also the ECAP, in the proceedings for the review of their complaints and appeals failed to provide judicial protection of their rights guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution and, accordingly, the decisions of these public authorities have resulted in the violation of their rights for freedom of election and participation as guaranteed by Article 45 [Freedom of Election and Participation] of the Constitution. The Constitutional Court declared the Referral admissible for review on merits after finding that the Applicants are authorized parties; challenge decisions of public authorities; have exhausted legal remedies as elaborated in the Judgment; have specified the fundamental rights and freedoms which have allegedly been violated; have submitted the Referral within the deadline; the Referral is not manifestly ill-founded; and the Court found no other admissibility requirement which was not fulfilled. As a result, the Referral passed the admissibility test and was declared admissible for review on merits.

Before considering the merits of the case, the Court addressed the issue of its jurisdiction pertaining to electoral disputes. In this respect, the Court clarified its constitutional competence as it pertains to individual referrals related to electoral disputes, emphasizing that, in this respect, the Court is limited to paragraph 7 of Article 113 Jurisdiction and Authorized Parties] of the Constitution,

namely, to assessing whether an act of a public authority may have violated the respective fundamental rights and freedoms of an individual, after the exhaustion of all legal remedies as provided by law. The Court then dealt with all the Applicants' allegations separately and in their entirety, applying into this assessment: (i) the constitutional guarantees related to the challenged rights, namely Articles 45 and 54 of the Constitution; (ii) the underlying principles resulting from the European heritage of the democratic elections summarized by the Venice Commission; and (iii) the case-law of the European Court of Human Rights (ECtHR).

Following the application of these guarantees, principles and tests established through the ECtHR case-law, the Court unanimously found that the challenged decisions of the Supreme Court did not violate the Applicants' rights to judicial protection of rights guaranteed by Article 54 of the Constitution and the right to a legal remedy guaranteed by Article 32 of the Constitution in conjunction with the right to an effective remedy guaranteed by Article 13 of the European Convention on Human Rights [ECHR], because in the circumstances of the present case, the Supreme Court has correctly assessed the issues pertaining to: (i) confirmation/cancellation of the election results; (ii) declaring as out of time the Applicants' allegations pertaining to irregularities on the election day, and which were submitted to the ECAP for the first time after the announcement of the final election results; and (iii) invalid and blank ballots, after the ECAP investigated the election material in the contested polling stations and did not find that "*the final election results were affected*". In addition, the decisions of the Supreme Court were "*sufficiently reasoned*" pertaining to the Applicants' allegations and are in conformity with the standards established through the case-law of the ECtHR and the Venice Commission as to the reasoning of decisions in electoral disputes. The findings of the Supreme Court, are in compliance with the constitutional guarantees, the relevant case-law of the ECtHR and the basic principles of the Venice Commission as it pertains to "*an effective system of appeal*" as an integral part of the "*procedural guarantees*", which is a fundamental condition for the implementation of the five underlying principles pertaining to the qualities of the vote. The Court unanimously held the challenged decisions of the Supreme Court have not violated the Applicants' rights pertaining to the freedom of election and participation guaranteed by Article 45 of the Constitution in conjunction with the right to free elections guaranteed by Article 3 of Protocol nr. 1 of the ECHR because, in the circumstances of the present case, these decisions have not been rendered in contradiction with: (i) any of the conditions for the implementation of the underlying principles on the qualities of the vote, as guaranteed by the Constitution, the election laws and the Code of Good Practice of the Venice Commission; (ii) any of the "*procedural guarantees*" for the implementation of the "*free suffrage*" and "*equal suffrage*" principles; (iii) the "*principle of transparency*" in electoral disputes as established by the ECtHR case-law and the underlying principles of the Venice Commission; and (iv) the ECtHR case-law in the context of the "*post-electoral rights*". The Court also unanimously rejected the Applicant's request for a hearing, because it did not consider that there is any ambiguity about "*evidence or law*". The Court found that the documents contained in the Referral are sufficient to establish the merits of this case. Therefore, at the end, the Court unanimously held that: (i) Decision [AA. No. 52/2017] of 25 November 2017 of the Supreme

Court was not rendered in violation of the fundamental rights and freedoms of the political entity LDK, and is in compliance with the fundamental rights and freedoms guaranteed by Articles 45 and 54 of the Constitution; and that (ii) Judgment [A.A.U.ZH. No. 62/2017] of 7 December 2017 of the Supreme Court was not rendered in violation of the fundamental rights and freedoms of Mr. Arban Abrashi and of political entity LDK, and is in compliance with their fundamental rights and freedoms guaranteed by Articles 45 and 54 of the Constitution.



Judgment

KO 171/18

Applicant

The Ombudsperson

Request for constitutional review of articles 2, 3 (paragraph 1, subparagraphs 2, 3 and 4), 4 (paragraph 1), 6, 7 (paragraph 1, subparagraphs 2, 3 and 4), 11 (paragraph 3), 18, 19 (paragraphs 5, 6, 7 and 8), 20 (paragraph 5), 21, 22, 23, 24 and 25 (paragraphs 2 and 3) of Law No. 06/L-048 on Independent Oversight Board for Civil Service in Kosovo

The Referral was submitted by the Ombudsperson, in the capacity of the authorized party pursuant to paragraph 2, subparagraph 1, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution. The Applicant requested the Constitutional Court to assess the constitutionality of certain provisions of Law No. 06/L-048 on Independent Oversight Board for Civil Service in Kosovo (hereinafter: the challenged Law) and requested the imposition of interim measure. In his Referral addressed to the Constitutional Court, the Applicant alleged that the challenged Law is not in compliance with Article 132 [Role and Competencies of the Ombudsperson] and Chapter VI [Government of the Republic of Kosovo] of the Constitution. The Applicant's main allegations were about: (i) exceeding the narrow scope of the Board, as defined in Chapter VI of the Constitution; (ii) the violation of the constitutional independence of the Ombudsperson and other independent constitutional institutions; and (iii) granting immunity to the members of the Board. The Court found that the Referral fulfills the admissibility requirements established in the Constitution and further specified in the Law and foresees in the Rules of Procedure, and in the merits of the Judgment addressed each allegation of the Applicant. The Court assessed and found the following: Firstly, as regards the Applicant's

allegation of exceeding the narrow scope of the Board, the Court considered that the term "Civil Service" according to the reading and interpretation of Article 101 of the Constitution should be understood in its context and the purpose of the drafter, which is stated in Article 1 of the Law on Civil Service, thus avoiding the possibility of misinterpretations or technical interpretations of the norm in question. Consequently, the Court found that Article 2 of the challenged Law is in compliance with Article 101 [Civil Service], paragraphs 1 and 2 of the Constitution. Secondly, as regards the second set of allegations, the Court initially recalled its case law in which it developed the principles regarding the independence of the constitutionally independent institutions, emphasizing that the latter are not exempted from the obligation that in the regulations or legal acts regulate the specifics regarding the employment relationship that differ from the general norms established by other laws, including the challenged Law; and during the implementation of the challenged Law, their function should be recognized, *inter alia*, in the issuance and application of their internal rules to protect their independence established in the Constitution and specific laws, to the extent necessary, to protect their independence. Whereas, as regards the constitutional review of the provisions of the challenged Law in relation to other public institutions, the Court concluded that Article 4 (paragraph 1) in conjunction with Article 3 (paragraph 1.1) governing the status of the Board, are not in compliance with the Constitution because the Court held that the Board cannot be categorized by the status of an independent constitutional institution under Chapter XII of the Constitution. Regarding the constitutional review of Article 6 (paragraph 1.2) and Article 19 (sub-paragraphs 5, 6, 7 and 8) of the challenged Law, these articles regulated the oversight of the selection of civil servants for senior management positions by the Board, the Court found that they are not in compliance with the Constitution.

The Court considered that the unequal treatment of civil servants in relation to the competence of the Board for overseeing the selection of civil servants as foreseen by these provisions of the challenged Law, are not in compliance with the constitutional right to equality before the law. The Court found that the following provisions of the challenged Law, namely Article 2 on the scope; Article 3 (paragraphs 1.2, 1.3, 1.4) for the definitions "civil servant", "civil servant of high management level", "civil servant of management level"; Article 7 (paragraph 1, subparagraphs 2, 3 and 4) for the competencies of the Board; Article 11, paragraph 3 on immunities; Article 18 on the ways of filing appeals; Article 20 (paragraph 5) for the implementation of the Board recommendations; Article 21 on Board decisions; Article 22 for initiating administrative conflict; Article 23 on procedures in case of non-implementation of the Board decision; Article 24 on administrative sanctions; and Article 25 (paragraphs 2 and 3) regarding the cooperation of the institutions of the challenged Law, are in compliance with the Constitution.

Thirdly, the Court, having regard to the limited immunity guaranteed by the challenged Law to the Board members, considered that the measure used was proportionate and found that Article 11, paragraph 3 of the challenged Law is compatible with the right of access to court, as an integral part of the right to fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

Finally, regarding the imposition of the interim measure, the Court considered that it was not necessary to consider it since it was decided on the merits of the case.



Judgment

KO 43/19

Applicant

Albulena Haxhiu, Driton Selmanaj and thirty other deputies of the Assembly of the Republic of Kosovo

Request for constitutional review of Law No. 06/L-145 on the Duties, Responsibilities and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia

The Referral was submitted by thirty and two (32) deputies of the Assembly of the Republic of Kosovo based on Article 113 paragraph 5 of the Constitution.

The subject matter was the constitutional review of Articles 1, 2, 4, 10 (paragraph 4 sub-paragraphs 1 and 2) and 11 (paragraph 3) of Law No. 06/L-145 on the Duties, Responsibilities and Competences of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia (the challenged Law).

The Applicants alleged that the challenged Law, in its entirety is not in compliance with the Constitution, namely is not in compliance with Article 2 [Sovereignty], Article 4 [Form of Government and Separation of Power], Article 7 [Values], Article 18 [Ratification of International Agreements], Article 20 [Delegation of Sovereignty], Article 65 [Competencies of the Assembly], Article 93 [Competencies of the Government], and Article 94 [Competencies of the Prime Minister] of the Constitution.

Within the challenged Law, the establishment of the state delegation and its scope was foreseen, as well as the institutional hierarchy and decision-making procedures in the process of dialogue with the Republic of Serbia.

Further this Law governed the functioning of the state delegation of the Republic of Kosovo for the dialogue with Republic of Serbia, and the latter provided for the organizational structure, activity, and the competences and responsibilities of the state delegation.

The Applicants in essence had three main allegations before the Court:

(i) *determining and changing the institutional constitutional and decision-making hierarchy in the dialogue with Serbia;*

(ii) *the legal competences of the state delegation directly interfere with the constitutional competences of the executive and legislative powers, as well as (iii) giving the lex specialis character to the challenged Law.*

The Applicants also requested the imposition of interim measure. The Court assessed that the Applicants' Referral is admissible based on the criteria established by the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Constitutional Court.

In elaborating the merits of the Referral, the Court assessed the Applicants' allegations of (i) *determining and changing the institutional constitutional and decision-making hierarchy in the dialogue with Serbia*, and (ii) *the legal competences of the state delegation directly interfere with the constitutional competences of the executive and legislative powers*, the Court found as follows:

The Court found that the State Delegation, which was established by the challenged Law, is not foreseen by the Constitution, and is not foreseen within the form of government and separation of power. As such, the state delegation cannot be involved in the interaction of separation, control and balance of powers and cannot interfere in the form of governance, namely the structure of separation of power, as defined by Article 4 of the Constitution.

The Court further found that the transfer of competences of the constitutional institutions to the "special mechanism" established in the challenged Law is an interference with the exercise of competences of the constitutional institutions provided by the Constitution. The transfer of competences to the "special mechanism" represents interference in the form of governance, separation of power, and is not in compliance with the democratic values and the rule of law, as set forth in Article 7 of the Constitution, because it vests in the state delegation the functions which do not comply with constitutional norms.

The Court also found that the constitutional norms, expressly envisaged an obligation regarding the exercise of constitutional competencies in the sphere of foreign policy for the competent institutions. The power to dialogue with a third country cannot be transferred to the state delegation as a "special mechanism" through a lower legal act such as the challenged Law.

In addition, the Court found that the Assembly of the Republic of Kosovo is obliged to oversee the foreign policy within the constitutional competences foreseen under paragraph 12 of Article 65 of the Constitution. The Court also emphasized that paragraph 1 of Article 93 of the Constitution determines the competences of the Government to "*propose and implement the internal and foreign policies of the country*", and paragraphs 1 and 9 of Article 94, provide that the Prime Minister as the head of the Government "*represents and leads the Government*" and "*Consults with the President on the implementation of the foreign policy of the country*".

Therefore, the Court concluded that the representation in the sphere of the foreign policy it is the duty of the constitutional institutions of the Republic of Kosovo. This competence is defined by the Constitution, and means, first of all, that any negotiation or other action related to the conclusion of international agreements on behalf of the Republic of Kosovo, must be within the constitutional obligations of the institutions of the Republic of Kosovo.

The Court also concluded that the competence to reach international agreements cannot be carried over or transferred from the constitutional institutions to a "special mechanism" as provided by the challenged Law. The Court, unanimously decided that Articles 1 (paragraph 1), 2, 4, 10 (paragraph 4, sub-paragraphs 1 and 2), and Article 11



(paragraph 3) of Law No. 06/L-145 on the Duties, Responsibilities and Competencies of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia, are not in compliance with paragraphs 1, 2, 3 and 4 of Article 4 [Form of Government and Separation of Power], paragraph 1 of Article 7 [Values], paragraph 12 of Article 65 [Competencies of the Assembly], paragraph 1 of Article 93 [Competencies of the Government], and paragraphs 1 and 9 of Article 94 [Competencies of the Prime Minister] of the Constitution.

Therefore, the Court found that as the essential Articles of Law No. 06/L-145 on the Duties, Responsibilities and Competencies of the State Delegation of the Republic of Kosovo in the Dialogue Process with Serbia, are not in compliance with the Constitution, the latter, in its entirety, is incompatible with the Constitution.

ECtHR – Important decisions (1 January – 30 June 2019)

* **Turkey failed to cooperate in murder case, while Cyprus did all that could be reasonably expected (29/01/2019)**

In its Grand Chamber judgment in the case of **Güzelyurtlu and Others v. Cyprus and Turkey** (*application no. 36925/07*), the European Court of Human Rights held: by 15 votes to two, that there had been **no violation of Article 2 (right to life/investigation)** of the European Convention on Human Rights **by Cyprus**, and unanimously, that there had been a **violation of Article 2** of the Convention **by Turkey**.

The case concerned the investigation into the killing of three Cypriot nationals of Turkish Cypriot origin in the Cypriot-Government controlled area of Cyprus in 2005. The killers fled back to the “Turkish Republic of Northern Cyprus” (the “TRNC”). Parallel investigations into the murders were conducted by the authorities of the Cypriot Government and the Turkish Government, including those of the “TRNC”. Both investigations reached an impasse in 2008. In their case before the European Court, the applicants, the victims’ relatives, alleged that the refusal of Turkey and Cyprus to co-operate meant that the killers had not faced justice. The Court considered that both States had had an obligation to cooperate with each other. It found that Cyprus had done all that could reasonably have been expected of it to obtain the surrender/extradition of the suspects from Turkey, submitting “Red notice” requests to Interpol and, when this proved unsuccessful, extradition requests to Turkey. The Cypriot authorities could not be criticised for refusing to submit all the evidence and to transfer the proceedings to the authorities of the “TRNC” or Turkey. That would have amounted to Cyprus waiving its criminal jurisdiction over a murder committed in its controlled area in favour of the courts of an unrecognised entity set up within its territory. Turkey, on the other hand, had not made the minimum effort required in the circumstances of the case. They had ignored Cyprus’s extradition requests, returning them without reply, contrary to their obligation under Article 2, read in the light of other international agreements, to cooperate by informing the requesting State of its decision and, in the case of rejection, to give reasons.

* **UK failed to protect the right to privacy of a lifelong activist whose personal data appeared in an extremism database (24/01/2019)**

In its Chamber judgment in the case of **Catt v. the United Kingdom** (*application no. 43514/15*) 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 applicant’s complaint about the collection and retention of his personal data in a police database for “domestic extremists”. The Court found in particular that the data held on the applicant concerned his political views and that such information required particular protection. The Court also had regard to Mr Catt’s age, (he is now 94), and the fact he had no history or prospect of committing acts of violence. While collecting the information on him had been justified, retaining it had not, particularly owing to a lack of safeguards, such as time-limits. There had therefore been a violation of the Convention.

* **Remarks by two public figures breached the right to be presumed innocent of a minister charged with embezzlement (31/01/2019)**

In its Chamber judgment in the case of **Maslarova v. Bulgaria** (*application no. 26966/10*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 6 § 2 (presumption of innocence)** of the European Convention on Human Rights, and a **violation of Article 13 (right to an effective remedy)**. The case concerned a complaint lodged by Ms Maslarova, who was Minister for Labour and Employment Policy from 2005 to 2009, about a failure to respect her right to be presumed innocent on account of remarks made by certain political and judicial figures, and relayed in the press, in relation to criminal proceedings against her for embezzlement of public funds. The Court found in particular that remarks made by the spokesperson for the Prosecutor General’s office – during a press conference about the proceedings in question – and those of a Member of Parliament who was also deputy chair of the ad hoc parliamentary commission of inquiry into the expenditure of the previous government, had breached Ms Maslarova’s right to be presumed innocent as they had gone beyond the mere conveying of information. The Court also found that no effective domestic remedy had been available to Ms Maslarova. The Court dismissed the complaints about comments attributed to the Prime Minister and about a request for the suspending of parliamentary immunity sent by the Prosecutor General to the National Assembly through official channels, finding that they were manifestly ill-founded.

* **Well-known Italian journalist’s prison sentence following his conviction for defamation was “manifestly disproportionate” (07/03/2019)**

In its Chamber judgment in the case of **Sallusti v. Italy** (*application no. 22350/13*) 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 a journalist, Alessandro Sallusti, who was found guilty of



defamation, fined and given a prison sentence, part of which he served under house arrest. The national courts found that articles published under his control had falsely reported that a 13-year old girl had been forced to have an abortion by her parents and a guardianship judge, despite clarifications in the press the day before that the girl had wanted the abortion. The Court found that Mr Sallusti had tarnished the honour and privacy rights of the girl, her parents and the judge, but that there had been no justification for giving him a prison sentence. Such a sanction had gone beyond what would have amounted to a “necessary” restriction on Mr Sallusti’s freedom of expression.

*** The domestic courts’ refusal to impose liability on an Internet forum for anonymously posted comments was not in breach of Article 8 (19/03/2019)**

In its Chamber judgment in the case of **Høiness v. Norway** (*application no. 43624/14*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights. The case concerned the domestic courts’ refusal to impose civil liability on an Internet forum host after vulgar comments about Ms Høiness had been posted on the forum. Ms Høiness, a well-known lawyer in Norway, began civil proceedings before the Oslo City Court in May 2011 against the Hegnar Media AS company and Mr H., an editor working for the Internet portal Hegnar Online, for defamation. She stated that her honour had been infringed because of sexual harassment in three comments made anonymously in Hegnar Online’s forum, which was incorporated into Hegnar Media AS. The defendants argued that they had not been aware of the comments and that they had been removed as soon as they had become aware of them. In January 2012, the City Court ruled in favour of the defendants. It held that the comments in question had not amounted to unlawful defamation as they had been incapable of offending either Ms Høiness’s honour or her reputation. Ms Høiness appealed. The High Court held in October 2013 that Ms Høiness’s claim for compensation could not succeed unless the defendants had acted with sufficient culpability. In that regard it noted, amongst other things, that there were “warning buttons” on the website, which readers could click on in order to react to comments. The High Court also upheld the City Court’s decision on litigation costs and awarded the defendants 183,380 Norwegian kroner (approximately 20,050 euros). Ms Høiness appealed but leave to appeal to the Supreme Court was refused. The ECtHR found in particular that the national courts had acted within their discretion (“margin of appreciation”) when seeking to establish a balance between Ms Høiness’s rights under Article 8 and the opposing right to freedom of expression under Article 10 of the news portal and host of the debate forums.

Moreover, the domestic courts’ rulings on litigation costs being awarded to the defendants had not as such violated Article 8.

*** Court says Russia must pay up to 15,000 euros to Georgians whose rights were violated by 2006 expulsions (26/03/2019)**

In its Chamber judgment in the case of **Berdzenishvili and Others v. Russia** (*application no. 14594/07 and six others*) the European Court of Human Rights held, unanimously, that, Russia had to pay sums ranging from 2,000 euros (EUR) to EUR 15,000 to Georgian citizens who were subjected to an administrative practice of arrest, detention and expulsion in October 2006.

The applicants complained that they had been among the Georgians who had been arrested and expelled from Russia in the autumn of 2006, incidents which prompted the Georgian Government to bring a case against the Russian Government. In its principal judgment, the Court found that most of the 19 applicants in the case had suffered violations of their rights under various Articles of the European Convention on Human Rights. It delayed a decision on just satisfaction pending a ruling on the same issue by the Grand Chamber in *Georgia v. Russia (I)* related to a large number of other Georgian applicants. The Grand Chamber delivered its just satisfaction decision in January 2019. It awarded EUR 10 million to be divided between the victims in that case and laying down principles for the distribution of that sum. The Chamber applied the same principles in the present case.

In *Berdzenishvili and Others* case, a Chamber of the Court in 2016 found violations of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) in respect of 14 applicants. It also found that 13 applicants had suffered violations of Article 5 §§ 1 and 4 (right to liberty and security /right to have lawfulness of detention decided speedily by a court); of Article 3 (prohibition of inhuman and degrading treatment); and of Article 13 (right to an effective remedy) in conjunction with Article 3.

*** Inadequate assessment of an expulsion order against a Kosovar national was in breach of the Convention (09/04/2019)**

In its Chamber judgment in the case of **I.M. v. Switzerland** (*application no. 23887/16*) the European Court of Human Rights held, unanimously, that there would be a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights if I.M. were to be expelled to Kosovo. The case concerned the Swiss authorities’ refusal to renew the residence permit of I.M. (a Kosovar national who has lived in Switzerland since 1993) and the order expelling him from Swiss territory, following his conviction for a rape committed in 2003. I.M., whose rate of disability has



been assessed at 80%, is currently living in Switzerland with his adult children, on whom he is dependent. The Court found in particular that the Federal Administrative Court, when adjudicating in 2015 – that is to say more than 12 years after the offence committed by the applicant – had not taken account of the change in the applicant's behaviour or assessed the impact of the major downturn in his state of health on the risk of his reoffending. Nor had the Federal Administrative Court taken into consideration the strength of the applicant's social, cultural and family bonds with the host country (Switzerland) and the country of destination (Kosovo), or carried out a sufficiently thorough analysis of the implications of I.M.'s dependence on his adult children. The domestic authorities had thus conducted a superficial examination of the proportionality of the expulsion order and had failed convincingly to demonstrate that it was proportionate to the legitimate aims sought to be achieved (the prevention of disorder or crime) and necessary in a democratic society.

*** Refusal to allow a prisoner convicted of terrorist offences to travel to her father's funeral did not breach the Convention (11/04/2019)**

In its Chamber judgment in the case of *Guimon v. France* (application no. 48798/14) 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 case concerned the refusal to allow the applicant, who was imprisoned in Rennes for terrorist offences, to travel to a funeral parlour in Bayonne to pay her last respects to her deceased father. The Court noted that the authorities had rejected the request on the grounds, firstly, of the applicant's criminal profile – she was serving several prison sentences for terrorist offences and continued to assert her membership of ETA – and, secondly, because it was impossible to organise a reinforced security escort within the time available. The Court found that the respondent State had not exceeded the margin of appreciation afforded to it in this area and that the refusal to grant the applicant's request had not been disproportionate and had pursued legitimate aims.

*** Decision to suspend the plenary sitting of the Parliament of the Autonomous Community of Catalonia complied with the Convention (28/05/2019)**

In its decision in the case of *Forcadelli Lluís and Others v. Spain* (application no. 75147/17) the European Court of Human Rights has unanimously declared **the application inadmissible**. The case concerned the Spain Constitutional Court's decision to suspend the plenary sitting of the Parliament of the

Autonomous Community of Catalonia on 9 October 2017. On 1 October 2017, an unauthorised referendum was held to decide on Catalonia's secession from Spanish territory. On 4 October 2017 two parliamentary groups (representing 56.3% of all seats in Parliament) requested that the Bureau of the Parliament of Catalonia convene a plenary sitting of Parliament, during which the President of the Government of Catalonia was to have assessed the results of the 1 October referendum and the effects of those results, pursuant to section 4 of Law no. 19/2017 on "the self-determination referendum". The Bureau granted the request, and the meeting was programmed for 10 a.m. on 9 October. Three other parliamentary groups (representing 43.7 % of the seats) contested the convening of that sitting on the grounds that it would infringe the Rules of the Parliament of Catalonia. Sixteen socialist MPs applied to the Constitutional Court for the issuing of an interim measure suspending the plenary sitting. The Constitutional Court declared the application admissible and ordered the provisional suspension of the plenary sitting.

In its decision, the ECtHR held that the interference with the applicants' right to freedom of assembly could reasonably be considered as meeting a "pressing social need". The suspension of the plenary sitting of the Parliament of the Autonomous Community of Catalonia had been "*necessary in a democratic society*", in particular in the interests of public safety, for the prevention of disorder and for the protection of the rights and freedoms of others, within the meaning of Article 11 § 2 of the Convention.

Furthermore, the Court observed that the decision by the Bureau of the Parliament to convene a plenary sitting had involved a manifest infringement of the decisions previously given by the Constitutional Court, pursuing the aim of protecting the Constitutional order.

*** The courts had not assessed the evidence of the alleged collaborator with the security services of the former communist regime (06/06/2019)**

The case of *Bileski v. North Macedonia* (application no. 78392/14) concerned proceedings brought against him for alleged collaboration with the security services of the former communist regime. In 2012, the Fact Verification Commission of North Macedonia found that Mr Bileski had been an "operational liaison" with the former security services in return for promotion, that his collaboration had been conscious and that it had caused harm to others. The decision was based in particular on notes from one of his alleged handlers. In proceedings before the administrative courts, he challenged both the Commission's findings and the authenticity of the documents. He requested that the courts hear oral evidence from the handler and an expert, namely a university professor and former intelligence officer.



The administrative courts dismissed his claims without examining the proposed witnesses. In 2013, the lower administrative court found in particular that the applicant “had not submitted any evidence that led to different facts”. In 2014, the Higher Administrative Court upheld that decision, holding that the alleged collaboration had complied with the statutory qualifying conditions and that “reports drawn up by handlers are to be regarded as facts”.

Relying in particular on Article 6 § 1 (right to a fair trial/hearing) of the Convention, Mr Bileski complained he had not been given the opportunity to present his case effectively. In particular, the courts had not assessed any of the evidence he had proposed, refusing to examine witnesses or hold an oral hearing, despite repeated requests; nor had they provided sufficient reasons for their decisions. He had also been given limited access to the security service files.

The Court found a **violation of Article 6 § 1 (right to a fair trial)** on account of the overall unfairness of the lustration proceedings and awarded him EUR 2,400 (non-pecuniary damage) and EUR 300 (costs and expenses).

*** Extradition of five school teachers to Turkey because of alleged ties with the Gülen movement was in breach of the Convention (11/06/2019)**

In its Chamber judgment in the case of **Ozdil and Others v. the Republic of Moldova** (application no. 42305/18) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights, and **a violation of Article 8 (right to respect for private and family life)**. It further declared the complaint under **Article 6 § 1 (right to a fair trial)**

inadmissible. The case concerned the disguised extradition of five Turkish nationals sought by the Turkish authorities for alleged ties with the Fethullah Gülen movement. The Court found in particular that arresting the applicants and extraditing them to Turkey had amounted to an extra-legal transfer from the territory of the respondent State to Turkey which had circumvented all the guarantees offered to the applicants by domestic and international law.

*** By denying the use of a computer and Internet access to two prisoners, the Turkish authorities breached the Convention right to education (18/06/2019)**

In its Chamber judgment in the case of **Mehmet Reşit Arslan and Orhan Bingöl v. Turkey** (application no. 47121/06) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 2 of Protocol No. 1 (right to education)** to the European Convention on Human Rights.

The case concerned the right to education of two convicted prisoners. Having been sentenced to life imprisonment and wishing to continue their higher-education studies, which had been interrupted by their conviction, the applicants had asked the prison authorities to allow them to use a computer and access the Internet. Their requests were denied. They appealed to the courts but were unsuccessful.

Having examined the circumstances, the Court found that the domestic courts had failed to weigh up the applicants’ interests on the one hand and the imperatives of public order on the other.

(For more information please visit the website of the European Court of Human Rights: 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 m² and is used by 65 employees.



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