



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO



## Newsletter

July — December 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.

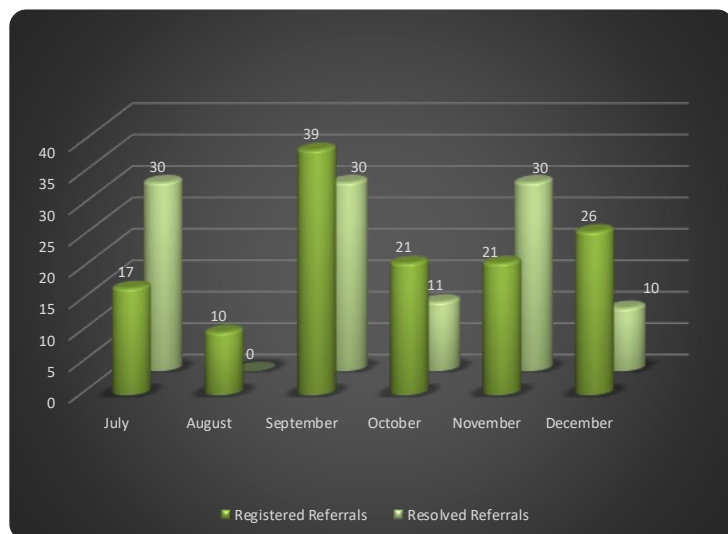


## Status of cases

During the six-month period: 1 July – 31 December 2019, the Court has received 134 Referrals and has processed a total of 309 Referrals/Cases. A total of 111 Referrals were decided or 35.9% of all available cases.

During this period, 111 decisions were published on the Court's webpage.

*The dynamics of received referrals by month  
(1 July - 31 December 2019)*



The following are 8 judgments that the Court rendered during the six month period, 1 July - 31 December 2019:

- Judgment in Case KI 25/18, submitted by: Vasilije Antović. The filed referral requested the constitutional review of Judgment Decision CA. No. 1952/2016 of the Court of Appeals of Kosovo of 24 April 2017.
- Judgment in Case KI 24/17, submitted by: Bedri Salihu. The filed referral requested the constitutional review of Judgment Rev. No. 308/2015 of the Supreme Court of Kosovo, of 12 January 2017.
- Judgment in Case KO 58/19, submitted by: Bilall Sherifi and 29 other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of decisions No. 57/2019, No. 58/2019, No. 59/2019, No. 60/2019, No.61/2019, No.62/2019, No. 63/2019 and No. 65/2019 of the President of the Republic of Kosovo of 28 March 2019.
- Judgment in Case KI 145/18, submitted by: Shehide Muhadri, Murat Muhadri and Sylë Ibrahim. The

filed referral requested the constitutional review of Decision AC. No. 530/2016 of the Court of Appeals of 18 June 2018.

- Judgment in Case KO 65/19, submitted by: The Ombudsperson. The filed referral requested the constitutional review of Article 32 (paragraph 1), Article 41 (paragraphs 1.3 and 1.4), Article 76 (paragraph 2), in conjunction with Article 2 (paragraph 7) and Article 22 (paragraph 1.3) of Law No. 06/L-010 on Notary.
- Judgment in Case KI 128/17, submitted by: Naser Husaj. The filed referral requested the constitutional review of Judgment Rev. No. 170/2017 of the Supreme Court of Kosovo of 23 August 2017.
- Judgment in Case KI 187/18 and KI 11/19, submitted by: Muhamet Idrizi. The filed referral requested the constitutional review of Judgment PML.no.226/2018 of the Supreme Court of Kosovo of 16 October 2018 and Judgment PML.no.293/2018 of the Supreme Court of Kosovo of 3 December 2018.
- Judgment in Case KI 10/18, submitted by: Fahri Deqani. The filed referral requested the constitutional review of Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo of 22 December 2017.

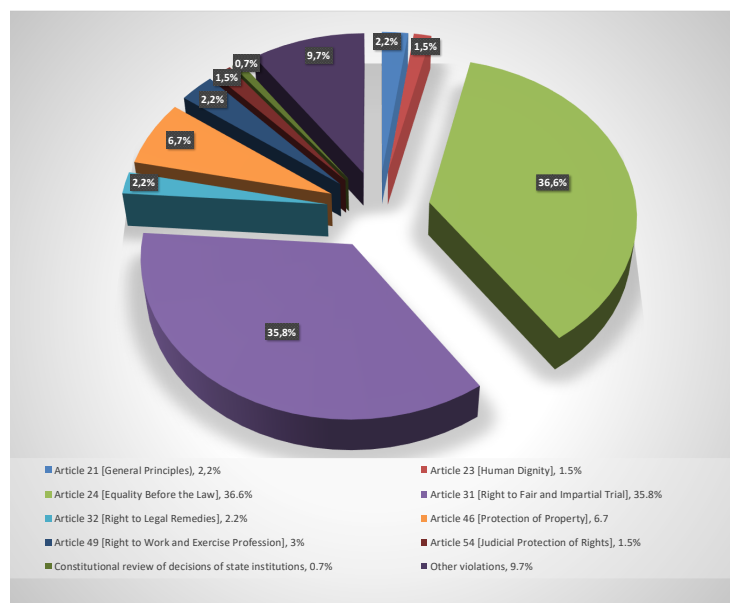
## Types of alleged violations

The types of alleged violations in the 134 referrals received during the six-month period: 1 July - 31 December 2019, are the following:

- Article 21 [General Principles], 3 cases or 2,2%;
- Article 23 [Human Dignity], 2 cases or 1,5%;
- Article 24 [Equality Before the Law], 49 cases or 36,6%;
- Article 31 [Right to Fair and Impartial Trial], 48 cases or 35,8 %;
- Article 32 [Right to Legal Remedies], 3 cases or 2,2%;
- Article 46 [Protection of Property], 9 cases or 6,7%;
- Article 49 [Right to Work and Exercise Profession], 4 cases or 3%;
- Article 54 [Judicial Protection of Rights], 2 cases or 1,5%;
- Constitutional review of decisions of state institutions, 1 case or 0,7 %;

- Other violations, 13 cases or 9,7%;

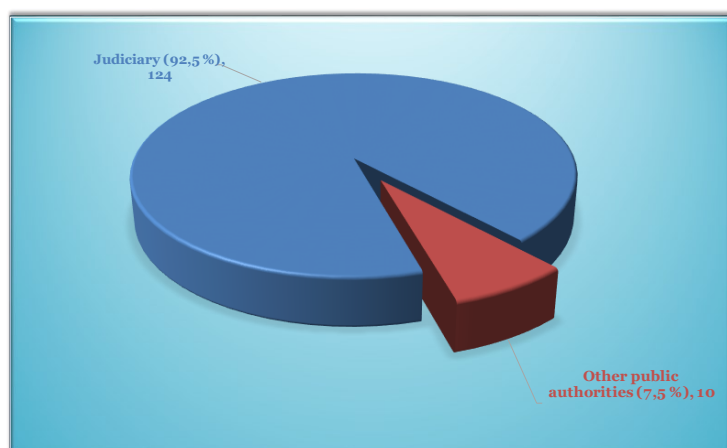
*Alleged violations by type  
(1 July - 31 December 2019)*



## Alleged violators of rights

- 124 Referrals or 92,5 % of Referrals refers to violations allegedly committed by court's decisions;
- 10 Referrals or 7,5 % of Referrals refers to decisions of other public authorities;

*Alleged violators of rights  
(1 July - 31 December 2019)*



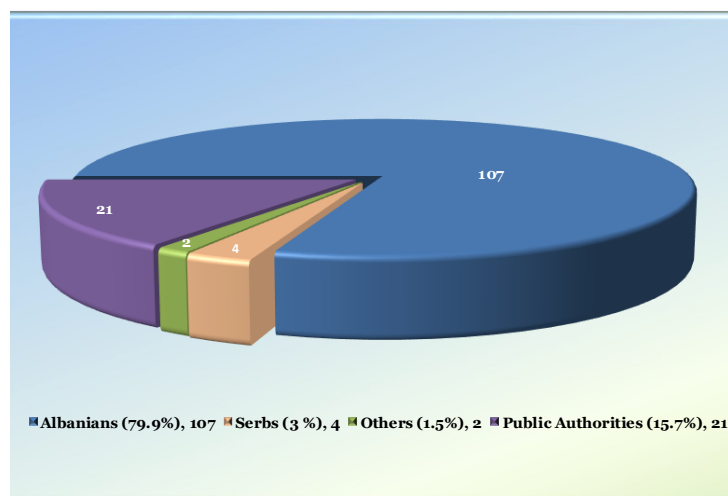
## Access to the Court

The access of individuals to the Court is the following:

- 107 Referrals were filed by Albanians, or 79,9%;
- 4 Referrals were filed by Serbs, or 3%;
- 2 Referrals were filed by other communities, or 1,5%;
- 21 Referrals were filed by other public authorities

(legal persons), or 15,7%;

*Ethnic structure of the Applicants  
(1 July - 31 December 2019)*



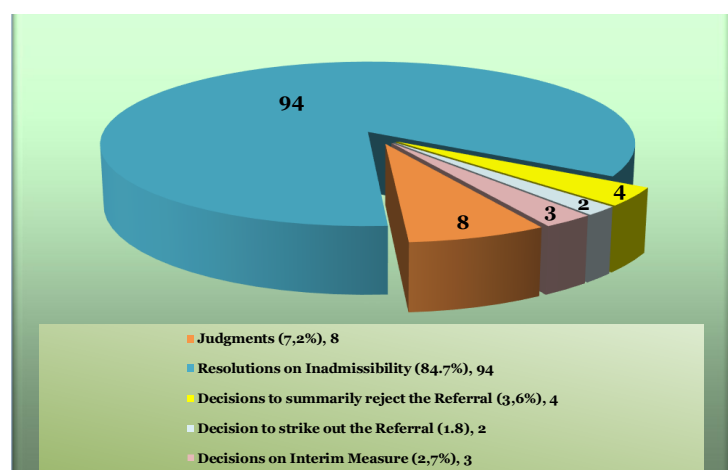
## Sessions and Review Panels

During the six-month period: 1 July - 31 December 2019, the Constitutional Court held 18 plenary sessions and 102 Review Panels in which the cases were resolved by decisions, resolutions and judgments. During this period, the Constitutional Court has published 111 decisions.

The structure of the published decisions is the following:

- 8 Judgments (7,2%);
- 94 Resolutions on Inadmissibility (84,7%);
- 4 Decisions to summarily reject the Referral (3,6%);
- 2 Decisions to strike out the Referral (1,8%);
- 3 Decisions on Interim Measure (2,7%);

*Structure of decisions  
(1 July - 31 December 2019)*





**9 July 2019**



The Constitutional Court of the Republic of Kosovo, in cooperation with the Council of Europe Office in Prishtina, organized a joint workshop on the “*European Standards on Human Rights on Admissibility Criteria*”, which was held at the “Hotel Emerald” in Prishtina.

The right of individuals to file a referral with the constitutional courts, the inadmissibility of referrals regarding the jurisdiction of the court and the admissibility criteria of the referrals applied by the European Court of Human Rights were just some of the topics discussed in this workshop.

The main speakers at the workshop were: Bajram Ljatifi, Deputy President of the Constitutional Court of Kosovo, Ms. Manuela Brillat, professor of human rights at the University of Strasbourg and Ms. Heidi Lempio, former EULEX human rights and legal officer.

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

**24 July 2019**

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

After expressing her gratitude for the contribution that the Kingdom of Norway has given to the Republic of Kosovo especially in advancing the rule of law in the country, President Rama-Hajrizi thanked Ambassador Sjaastad for the assistance provided by the Norwegian Government in building the professional capacities of the Constitutional Court of Kosovo.

On this occasion, she emphasized the importance of the project initiated at the beginning of this year, with the support of the Council of Europe Office in Prishtina and the Norwegian Embassy in Kosovo, aiming at advancing the professional capacities of the Constitutional Court for the purpose of more effective implementation of the European standards in addressing individual complaints and communication with the public.

President Rama-Hajrizi, assessed that this project will strengthen even more the implementation of the constitutionality and will enable the faster approximation of our country to the European standards of the constitutional justice.

In the end, she thanked Ambassador Sjaastad for his engagement and for the support provided to the Constitutional Court during his service in Kosovo, wishing him further success in his career.



After thanking President Rama-Hajrizi for the hospitality and the cooperation so far, Ambassador Sjaastad expressed the conviction that the support of Norway for the Constitutional Court as well as for other state institutions of Kosovo, will not be missing in the future.

**6 September 2019**



The President of the Constitutional Court of the Republic of Kosovo, Ms. Arta Rama-Hajrizi, hosted an introduction meeting for the new Ambassador of the





United Kingdom in Kosovo, Mr. Nicholas Abbott. Having congratulated him on his new assignment, President Rama-Hajrizi informed Ambassador Abbott about the current work of the Constitutional Court, the challenges faced after the simultaneous removal of four judges, two of them international, and on the contribution of this institution in the development of constitutional judiciary and the rule of law in Kosovo. During the conversation, she also emphasized the good cooperation relationship with the constitutional courts of the countries of the region and of the European countries, as well as the continuous efforts that are being made to increase the transparency of the work and to enhance the professional capacities of the Court.

President Rama-Hajrizi thanked Ambassador Abbott for the assistance the UK Government has so far provided to the Constitutional Court, as well as to other institutions in the country, in supporting law enforcement and protection of human rights.

Ambassador Abbott thanked President Rama-Hajrizi for the hospitality, and confirmed that the rule of law in Kosovo has been and remains a priority for the United Kingdom, for which shall continue to provide its support.

**20 September 2019**



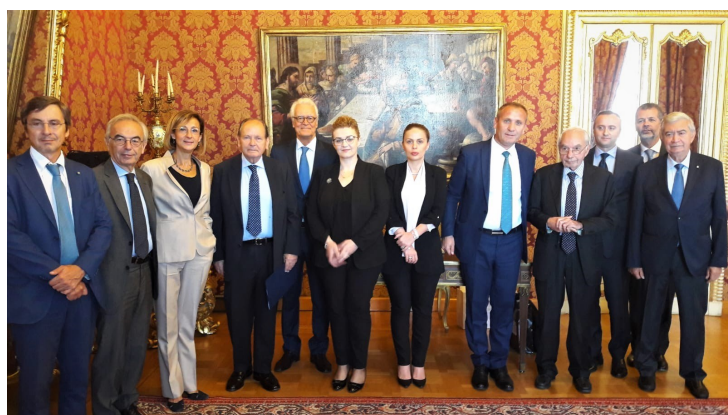
President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, hosted an introductory meeting for the new Ambassador of the Kingdom of Norway in Kosovo, Mr. Jens Erik Grøndahl.

During the conversation, President Rama-Hajrizi first wished Ambassador Grøndahl success in his new assignment, and then informed him on the composition, the role and the challenges faced so far in the institutional development of the Constitutional Court. During the meeting, she also spoke about the ongoing efforts of the Constitutional Court to gain membership in various international organizations

and forums, as well as for the consolidation of the professional decision-making of the Court. President Rama-Hajrizi took the opportunity to express her gratitude to the Norwegian Embassy in Kosovo for the support provided to the project aimed at the more effective implementation by the Constitutional Court of European standards in the handling of individual complaints and communication with the public, initiated during March of this year, in cooperation with the Council of Europe Office in Prishtina.

Ambassador Grøndahl confirmed that Norway will continue to support the Constitutional Court and other institutions of Kosovo, while assessing as priority further progress in the rule of law and the protection of human rights.

**27 September 2019**



A delegation of judges of the Constitutional Court of the Republic of Kosovo, headed by the President of the Court, Mrs. Arta Rama-Hajrizi, paid a working visit to the Constitutional Court of Italy, seated in Rome. The delegation of the Constitutional Court of Kosovo was received in the meeting by the President of the Constitutional Court of Italy, Mr. Giorgio Lattanzi, and the two Deputy Presidents of this Court, Ms. Marta Cartabia and Mr. Mario R. Morelli.

During the conversation, the two sides exchanged their experience and views regarding the respective judicial systems of the two countries, focusing in particular on the functional independence of the constitutional courts, the process of appointment of the constitutional judges and legal reforms in the justice system. The constitutional control of central authority acts, the review of decisions of the regular judiciary and deepening of cooperation in the areas of mutual interest were also the topics of discussion at the meeting. The judges of the two courts then attended a joint workshop, which addressed the role of the constitutional courts in the implementation of the European Convention on Human Rights.

**23 October 2019**

The Constitutional Court of the Republic of Kosovo celebrated the jubilee of 10th Judicial Year with a solemn ceremony held at the "Emerald" Hotel in Prishtina. The jubilee ceremony was opened by an





occasional speech by the President of the Constitutional Court of Kosovo, Mrs. Arta Rama-Hajrizi, and the ceremony was attended by the highest state and international personalities in the country, as well as highest level delegations from the



constitutional courts of the countries of the region and other European countries. The participants in the solemn ceremony were also addressed with an occasional speech by an internationally well-known jurist and at the same time the Representative of the Republic of Ireland to the Venice Commission, Ms. Grainne McMorro, as well as former international judge of the Constitutional Court, Prof. Dr. Snezhana Botusharova.

## 24 October 2019

On the occasion of the 10th Judicial Year of the Constitutional Court of the Republic of Kosovo, at the “Emerald” Hotel in Prishtina, was held the International Conference on the topic: *“Ensuring the Rule of Law and Human Rights through Constitutional Justice Mechanisms: Challenges of the 21st Century”*. The Conference was declared open by



the President of the Constitutional Court of Kosovo, Mrs. Arta Rama-Hajrizi, who during her discussion, among other things said that, *“the rule of law is an indisputable precondition for protecting the constitutional values upon which the Republic of Kosovo is founded and built, based on which the latter is to be strengthened and developed in the decades to come”*.

According to the President Rama-Hajrizi, *“the challenges of the 21st century, faced by the courts that bear the responsibility of definitively establishing the constitutional justice, are challenges that have not been faced before and present novelty in the way the human rights relate to the rule of law”*. Following the Conference with their presentations appeared: Jean-Claude Wiwinius, President of the Constitutional Court of Luxembourg, Prof. Dr. Bekim Sejdiu, Judge of the Constitutional Court of the Republic of Kosovo, Mr. Enver Peci, President of the Supreme Court of the Republic of Kosovo, Mr. Hilmi Jashari, the Ombudsperson, as well as judges of the constitutional courts of Montenegro, the Czech Republic, North Macedonia, Portugal and Turkey.

## 8 November 2019



With the support of the USAID Kosovo Justice System Strengthening Program (JSSP), the Constitutional Court presented to the students of the bachelor level of the Faculty of Law of the University of Prishtina “Hasan Prishtina” in Prishtina, the key search features of its new website.

During the presentation held at the amphitheater of the Faculty Law, the students had the opportunity to become more closely acquainted with the features and possibilities of advanced search of the Court decisions, using filtering based on the type of referral, case number, name of the Applicant, filing date or keywords of the content of the decisions.

The possibility of subscribing directly to the latest published decisions, as well as to the bulletins of case law and periodic newsletters of the Court, were another feature of the website about which the students of the Faculty Law of the University of Prishtina were informed in a more detailed way.

The website of the Constitutional Court was presented by the Director of the Information and Communication Office of the Court, Mr. Veton Dula, as well as by the Senior Constitutional Legal Advisor of the Court, Mr. Jeton Bytyqi.

## 12 November 2019

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in an introductory meeting the new Ambassador of France to Kosovo, Ms. Marie-Christine Butel.

After wishing her success in the new position, President Rama-Hajrizi informed Ambassador Butel about the current work of the Constitutional Court and the progress made in consolidating the constitutional





judiciary of the Republic of Kosovo. Current developments in the country, challenges in strengthening the rule of law, legal and constitutional reform initiatives were also subject of the joint discussion.



President Rama-Hajrizi expressed further in the meeting her gratitude for the continuous contribution that the French Government has made to the institutions of Kosovo and its Constitutional Court, through projects aimed primarily at enhancing professional and infrastructural capacities as well as economic development in the country.

After thanking President Rama-Hajrizi for the hospitality, ambassador Butel reconfirmed the readiness of France to further support the efforts of the Constitutional Court and other institutions in the country, in implementing European standards of justice.

**19 November 2019**



With the mediation of the USAID Justice System Strengthening Program in Kosovo (JSSP) and the American Federalist Society for Law and Public Policy Studies, the judges of the Constitutional Court of the Republic of Kosovo held a professional discussion through a video conference with the President of the

District Court of Minnesota in the United States, Mr. John R. Tunheim. The exchange of mutual experience about the procedures conducted in the review sessions and the role of judges in conducting public sessions were among the main topics discussed in this video conference. During the discussion, the judges of the Constitutional Court of Kosovo became more closely acquainted also with the practices of the federal courts in the United States.

**22 November 2019**



The Constitutional Court of the Republic of Kosovo in cooperation with the Council of Europe Office in Prishtina organized a roundtable on the topic: *“Principles and Methodology of the European Court of Human Rights”*, which was held on Thursday and Friday, 21 and 22 November 2019, at the Hotel “Garden” in Prishtina.

The case processing before the European Court of Human Rights (ECtHR), the ECtHR administrative methods, subsidiarity and the application of the ECtHR methods by national courts, were just some of the topics discussed at this roundtable with judges and advisors of the Constitutional Court.

The panelists and moderators of the roundtable were: Dr. Kanstantsin Dzehtsiarou, a senior lecturer at School of Law of the University of Liverpool in England and Mr. Velimir Delovski, human rights expert from the Republic of Macedonia.

The roundtable was organized as part of the project supported by the Council of Europe Office in Prishtina and the Norwegian Embassy in Kosovo, aiming to enhance the professional capacity of the Constitutional Court in order to more effectively implement European standards in dealing with individual complaints and communication with the public.

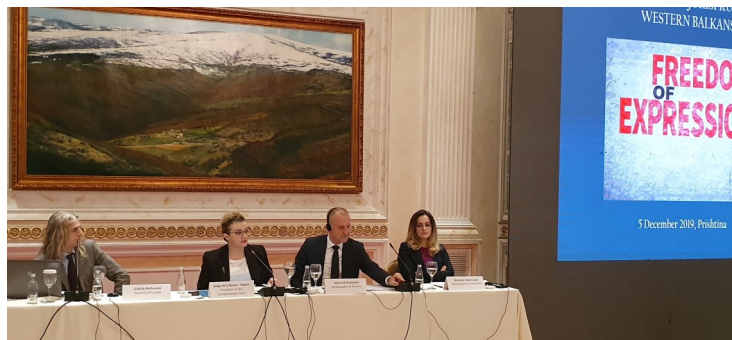
**5 December 2019**

Judges and constitutional-legal advisors of the Constitutional Court of the Republic of Kosovo participated in the International Conference organized by the Council of Europe Office in Prishtina on the topic: *“Freedom of expression and constitutional jurisprudence in the Western Balkans”*, held at the “Swiss Diamond Hotel” in Prishtina.

In her opening speech, the President of the Constitutional Court of Kosovo, Mrs. Arta Rama-Hajrizi, inter alia, said the, *“The Constitutional Court of Kosovo has never restricted itself to relying solely on the interpretation of the provisions of the*



*Constitution of the country when it comes to respecting the freedom of expression". According to her, in protection of this fundamental human right, "the Constitutional Court has always taken into account and compared with the consolidated practices of the European Constitutional Courts, and has always faithfully applied the articles of the European Convention on Human Right and the decisions of the European Court of Human Rights (ECtHR)".*



Among the main speakers at the conference, aiming at discussing and exchanging experiences of the constitutional courts of the region in the implementation of the European Convention on Human Rights, was the judge of the Constitutional Court of Kosovo, Ms. Remzije Istrefi-Peci, who gave a presentation on the issue of freedom of expression for judges under the ECtHR practice, Mr. Naser Ajdari, Judge of the Constitutional Court of North Macedonia, Ms. Mirjana Lazarova, former judge at the ECtHR, Ms. Beth Grossman, lawyer in the Great Britain, Mr. Paolo Cavalieri, Professor of Media Law at the University of Edinburgh, Ms. Fatma Gülbin Üzcüre, Senior Legal Advisor at the Constitutional Court of Turkey and Ms. Sevima Sali Terzic, Senior Legal Advisor at the Constitutional Court of Bosnia and Herzegovina.

Following the conference was also shown the video animation made by the Constitutional Court of Kosovo, with the support of the Council of Europe Office in Prishtina, on the right and ways of submitting referrals by individuals and other authorized parties to the Constitutional Court.

**20 December 2019**

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, participated in the annual meeting of the Forum of Judges and Prosecutors of the Republic of Kosovo, which this year was organized at the Emerald Hotel in Prishtina, with the support of the U.S. Embassy in Kosovo.

In the speech addressed before representatives of the prosecution and regular courts, as well as accredited diplomats in the country, President Rama-Hajrizi mainly discussed about the opportunities available to prosecutors and regular courts to avoid violations of human rights and consequently reduce the number of individual referrals with allegations of violation of



human rights before the Constitutional Court. Among others, President Rama-Hajrizi said that, *"although the Constitution has designated the Constitutional Court as the ultimate authority for the final interpretation of the Constitution, other public authorities, including the prosecution and the regular courts, are undoubtedly at the forefront in protecting the Constitution"*.

According to her, *"the Constitutional Court declares over 90 percent of applicants' referrals, requesting constitutional review of a regular courts' decision, inadmissible. In other words, this means that the Constitutional Court confirms the constitutionality of decisions of the regular courts in over 90 percent of cases"*.

In her conclusion of the speech, President Rama-Hajrizi asserted that a broad reasoning of indictment and its support with proofs and evidence by the prosecution, as well as a grounded reasoning of court decisions in relation to allegations of parties, provide the safest guarantee for avoiding violations of human rights and freedoms in a court trial.



### Judgment

KO 65/19

### Applicant

Ombudsperson

*Request for constitutional review of Article 32 (paragraph 1), Article 41 (paragraph 1.3 and 1.4), and Article 76 (paragraph 2), in conjunction with Article 2 (paragraph 7) and Article 22 (paragraph 1.3) of the Law no. 06/L-010 on Notary, which entered into force on 26 December 2018*

The Applicant challenged Articles 32 (paragraph 1), 41 (paragraphs 1.3 and 1.4), and 76 (paragraph 2), in conjunction with Article 2 (paragraph 7) and Article 22 (paragraph 1.3) of the Law no. 06/L-010 on Notary, stating that the above-mentioned articles are in violation of Article 5 [Languages] and paragraphs 1 and 3 of Article 46 [Protection of Property] of the Constitution.

With regard to Article 32 (1), the Applicant alleged that the article in question is incompatible with Article 5 [Languages] of the Constitution because it allows documents to be issued in other languages that are not official in the Republic of Kosovo.

With regard to Article 41 (1.3) and (1.4), the Applicant alleged that the article in question is incompatible with Article 46 [Protection of Property] because it requires from notaries to carry out several services free of charge.

With regard to Article 76 (2), the Applicant, *inter alia*, alleged that the article in question by retroactive effect has changed the age of retirement of notaries from the age of 70 to 65, whereupon they have been denied legitimate expectations and future benefit which resulted in violation of the right to property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR.

The Court, on the basis of its analysis, concluded:

i) that the Applicant's allegations that Article 32 of the challenged law violates Article 5 [Languages] of the

Constitution are ungrounded because no new obligations are imposed on the notary service, but they are rather presented exclusively as "possibility" and that their enforcement and implementation will depend on each notary public official individually the Court concluded that Article 32 of the challenged law is not in contradiction with, and does not violate the rights referred to under Article 5 [Languages] of the Constitution;

ii) that the Applicant's allegations that paragraphs 1.3 and 1.4 of Article 41 of the challenged law are in violation of Article 46 [Protection of Property] of the Constitution are ungrounded because the legislator, following the current trends in a democratic society and, in order to promote and advance the property rights of both genders, under legal solution in Article 41 (1.3) and (1.4) provided precisely the extent to which the notary public officials should perform certain legal tasks without financial compensation. The Court concluded that paragraphs 1.3 and 1.4 of Article 41 of the challenged law are not in contradiction and do not violate the rights under Article 46 [Protection of Property] of the Constitution.

iii) that the Applicant's allegations that Article 76 (paragraph 2), in conjunction with Article 2 (paragraph 7) and Article 22 (paragraph 1.3), of the challenged Law violate Article 46 [Protection of Property] of the Constitution are ungrounded because "legitimate expectations" do not in themselves, in accordance with ECtHR practice, guarantee that the legislator cannot change the law, especially if such a change is proportionate the Court concluded that Article 76 (paragraph 2), in conjunction with Article 2 (paragraph 7) and Article 22 (paragraph 1.3) of the challenged Law are not in contradiction and do not violate the rights under Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol no. 1 [Protection of Property] of the ECHR. iv) finally, the Court explained that the legislature – because of its position and democratic legitimacy – is in a better position than the Court to determine and advance the country's economic and social policies. iv) furthermore, the Court, taking into consideration its conclusions in relation to Article 76 (paragraph 2), Article 2 (paragraph 7) and Article 22 (paragraph 1.3), of the challenged Law, concluded that there are no legal grounds for further extension of the interim measure which was imposed on 20 May 2019, and extended on 19 July 2019.





## Judgment

KO 58/19

## Applicant

Bilall Sherifi and 29 other deputies of the Assembly of the Republic of Kosovo

*Request for constitutional review of decisions No. 57/2019, No. 58/2019, No. 59/2019, No. 60/2019, No. 61/2019, No. 62/2019, No. 63/2019 and No. 65/2019 of the President of the Republic of Kosovo, of 28 March 2019*

The Referral was submitted by thirty (30) deputies of the Assembly of the Republic of Kosovo based on Article 113, paragraph 2, subparagraph 1, of the Constitution. Subject matter of the Referral was constitutional review of decisions of the President of the Republic of Kosovo for appointment of the members of the CEC of the Republic of Kosovo, namely:

1. Decision No. 57/2019, of 28 March 2019, for the appointment of Mr. Qemajl Kurtishi as a member of the CEC from the Bosnian community;
2. Decision No. 58/2019, of 28 March 2019, for the appointment of Mr. Stevan Veselinović as a member of the CEC from the Serbian community;
3. Decision No. 59/2019, of 28 March 2019, for the appointment of Mr. Ercan Şpat as a member of the CEC from the Turkish community;
4. Decision No. 60/2019, of 28 March 2019, for the appointment of Mr. Alfred Kinolli as a member of the CEC from the Roma, Ashkali and Egyptian community;
5. Decision No. 61/2019, of 28 March 2019, for the appointment of Mrs. Nazlie Bala as a member of the CEC;
6. Decision No. 62/2019, of 28 March 2019, for the appointment of Mr. Adnan Rustemi as a member of

the CEC;

7. Decision No. 63/2019, of 28 March 2019, for the appointment of Mr. Florian Dushi as a member of the CEC;

8. Decision No. Decision No. 65/2019, of 28 March 2019, for the appointment of Mr. Sami Hamiti as a member of the CEC.

The Applicants alleged that the above-mentioned decisions are not in compliance with paragraph 4 of Article 139 [Central Election Commission] of the Constitution of the Republic of Kosovo. The Applicants, in essence, before the Court raised the following main allegations:

The first objection concerned with the form of appointment of the CEC members from the parliamentary groups that emerged from the political entities that won the elections for the Assembly of Kosovo. The Applicants considered the need to put emphasis on the terminology used by the Constitution of Kosovo in the relevant provision of Article 139, paragraph 4, of the Constitution, which reads: “Six (6) members shall be appointed by the six largest parliamentary groups represented in the Assembly”. Thus, the Applicants alleged that the term “represented” has the of a post-festum character, which in itself implies that, “it is not necessary that a political entity that has won certain seats in the Assembly be represented at the level of a parliamentary group with that number of deputies with a mandate”.

They also alleged that it is the provision of Article 70, paragraph 1, of the Constitution that provides the freedom to exercise the function of deputy within the scope of his/her mandate, without being subject to any other binding mandate. According to the Applicants, “the appointment of CEC members, taking into account the structure of parliamentary groups according to the result of the election of political entities, would preserve political freedom of representation in the Assembly of Kosovo and would deny political initiatives in the form of parliamentary groups of deputies”.

The Applicants alleged that the President, by interpreting the “largest parliamentary groups” as a party, coalition, civic initiative that emerged from political entities that won the elections for the



Assembly of Kosovo and appointing CEC members by challenged acts, according to that interpretation, violated the constitutional provisions. This is because “the largest parliamentary groups”, according to Article 139, paragraph 4 of the Constitution, are those groups that are formed after the constitution of the Assembly of the Republic of Kosovo, and exist as such at the moment when the President appoints the CEC members. The Court considered that the Referral of the Applicants is admissible based on the requirements 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 reviewed the allegations of the Applicants. In this respect, the Court found that the challenged decisions meet the requirements to be considered by the Court under Article 113, paragraph 2, subparagraph 1 of the Constitution. This is because the Court considers that the challenged decisions, regardless of their name, are binding in nature and concern the appointment of members of the CEC, which is an independent constitutional institution mandated to organize and monitor elections in Kosovo on the basis of the powers conferred on it based on the Constitution and the Law on General Elections in Kosovo (hereinafter: Laws on Elections). The Court recalled, first of all, that the Constitution, apart from specifying the manner of appointment of CEC members and from what parliamentary groups are appointed, does not contain any specific definition as to whether the parliamentary groups for the purpose of appointing CEC members are those parliamentary groups: *i)* that emerged from political entities that won the elections for the Assembly of Kosovo, or, *ii)* those that were established after the constitution of the Assembly of the Republic

of Kosovo. In this regard, the Court assessed the constitutional and other provisions pertaining to the parliamentary groups of the Assembly, having regard to (i) the constitutional role of the CEC as an independent institution for the management of elections and referendums, (ii) the manner of appointing CEC members; (iii) the duration of a mandate and (iv) the time of their appointment. The Court recalled that CEC members are not mandated for a fixed term. Their mandate is related to the mandate of the election cycle and, in principle, begins no later than 60 (sixty) days after the election results are confirmed, with the exception of the exceptions provided for in Article 61, paragraph 3, subparagraph (e) of the Law on Elections. Therefore, pursuant to the abovementioned provisions, the election of CEC members is not related to the issue of constitution of the Assembly, which may or may not take place within 60 (sixty) days from the date of confirmation of the election results, or with parliamentary groups in the narrow sense, which are formed after the constitution of the Assembly, when parliamentary life begins in the full sense of the word, which enables the organization of deputies into the parliamentary groups that can be distinguished from parties or coalitions that have emerged from the elections. The appointment of CEC members based on the results of general elections ensures that there is no institutional vacuum in the CEC, regardless of the time of the establishment of the Assembly. This means that the President, based on Article 61.4 of the Law on Elections, may exercise his/her duty of appointing CEC members within 60 (sixty) days from the date of confirmation of the elections by parliamentary groups political entities based on the results of the elections for the Assembly.

Therefore, the Court found that the largest parliamentary groups represented in the Assembly, for the purposes of Article 139 paragraph 4 of the Constitution, are those 6 (six) parties, coalitions, citizens’ initiatives, which have more seats in the Assembly than any other party, coalition, citizens’ initiatives that participated in the elections for the Assembly as such.

Therefore, the Court considered that the challenged acts do not violate the provisions of the Constitution, namely paragraph 4 of Article 139 [Central Election Commission] of the Constitution.





### **Judgment**

KI 10/18

### **Applicant**

Fahri Deqani

*Request for constitutional review of Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo of 22 December 2017*

Following his arrest, the Applicant was placed in detention on 31 July 2010. His detention pending trial lasted until 3 September 2012, when the District Court rendered the decision, which found him guilty and sentenced him to imprisonment. The Applicant filed an appeal against the aforementioned Judgment of the District Court. The Court of Appeals upheld the Applicant's appeal, annulling the judgment of the District Court and remanding the case to the Basic Court for retrial. During the period between 3 September 2012 and 26 November 2013, the Applicant's detention on remand was a detention on remand within the meaning of Article 29, paragraph 1, item 1, of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 367 [Detention on Remand after Announcement of Judgment], paragraph 2 of the Criminal Procedure Code of the Republic of Kosovo.

Whereas, as a result of the Judgment of the Court of Appeals, by which the case against the Applicant was remanded for retrial, the second period of detention pending trial within the meaning of Article 29, paragraph 1, item 2 of the Constitution, in conjunction with Article 5, paragraph 3, of the European Convention on Human Rights (hereinafter: the ECHR), began on 26 November 2013 and continued until the date the Judgment of the Basic Court in Ferizaj [PKR No. 155/15], of 6 April 2018, was rendered, by which the Applicant was found guilty and sentenced to effective imprisonment. The Applicant alleged that the decisions of the regular courts on the extension of detention pending trial against the

Applicant, namely, the challenged decision of the Supreme Court violated his right guaranteed by Article 29 [Right to Liberty and Security], paragraph 4, and Article 31 [Right to Fair and Impartial Trial] of the Constitution.

The Court, regarding the Applicant's allegation of a violation of Article 29 [Right to Liberty and Security] of the Constitution, in conjunction with Article 5 (Right to liberty and security) of the ECHR, held that the reasoning of the Basic Court on the extension of detention on remand, confirmed by the Court of Appeals and the Supreme Court through the challenged Judgment, does not justify its decision to extend detention on remand to the Applicant. Therefore, the regular courts failed to provide concrete and sufficient reasoning as to why the alternative measures were not applicable in the Applicant's case. Accordingly, the Court held that the challenged Judgment Pml. No. 357/2017, of the Supreme Court of 22 December 2017, which rejected the Applicant's request for protection of legality against Decision PN1. No. 2156/2017 of the Court of Appeals of 6 December 2017, and Decision PKR. No. 155/15 of the Basic Court in Ferizaj of 24 November 2017, was not in compliance with Article 29, paragraph 1, item (2) of the Constitution, in conjunction with Article 5, paragraph 3 of the ECHR. The Court was aware of the fact that the Applicant was found guilty and sentenced to effective imprisonment through the Judgment of the Basic Court in Ferizaj [PKR. No. 155/15 of 6 April 2018], as part of the criminal proceedings conducted against him. In this regard, the Court recalled that this procedure was not the subject of review by the Court, and that only the assessment of the challenged Judgment of the Supreme Court regarding the extension of the detention pending trial against the Applicant is the subject of review.

In this regard, the Court, through this Judgment, clearly and directly conveyed the request and instruction that should serve to the regular courts in order to comply with the constitutional requirements of Article 29 of the Constitution, as well as with the requirements of Article 5 of the ECHR, as widely interpreted by the ECHR in its case law, that their reasoning for extension of detention pending trial must contain detailed reasoning and an individualized assessment according to the circumstances and facts of the case, explaining and proving why the detention pending trial is necessary and why other alternative measures are not appropriate for the smooth and successful conduct of the criminal proceedings.

The Court, with regard to the Applicant's allegation concerning the length of the detention pending his conviction, found that it did not fall within the scope of Article 31 of the Constitution.



## ECtHR – Important decisions (1 July – 31 December 2019)

### \* **Criminal conviction of Selahattin Demirtaş for statements made during a television broadcast breached his freedom of expression (09/07/2019)**

In its Chamber judgment in the case of **Selahattin Demirtaş v. Turkey** (no. 3) (*application no. 8732/11*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 10 (Freedom of expression)** of the European Convention on Human Rights.

The case concerned Mr Demirtaş's criminal conviction for statements made during a television broadcast. The statements by Mr Demirtaş had essentially urged the authorities and the public to consider the potential role of Mr Öcalan, the imprisoned leader of the PKK (Workers' Party of Kurdistan, an illegal armed organisation), in finding a peaceful solution to the Kurdish problem, and had called for an improvement in the conditions of his detention.

Following a detailed examination of the statements in question, the Court found that, taken as a whole, they could not be regarded as amounting to incitement to engage in violence, armed resistance or rebellion, nor did they constitute hate speech. The Court held that the criminal proceedings instituted against the applicant on charges of disseminating propaganda in favour of a terrorist organisation had not met a pressing social need, had not been proportionate to the legitimate aims pursued and had consequently not been necessary in a democratic society.

### \* **Bosnia and Herzegovina must enforce decisions ordering removal of church built on Srebrenica genocide survivors' land (01/10/2019)**

In its Chamber judgment in the case of **Orlović and Others v. Bosnia and Herzegovina** (*application no. 16332/18*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 1 of Protocol No. 1 (Protection of property)** to the European Convention on Human Rights.

The case concerned a church built by the Serbian Orthodox Parish on the applicants' land after they had had to flee their property during the 1992-95 war. The Court found in particular that the authorities' failure to comply with final and binding decisions of 1999 and 2001 ordering full repossession of the land by the applicants, without any justification on the part of the Government for such inaction, had seriously frustrated their property rights.

It also held, by six votes to one, under **Article 46 (Binding force and implementation)** that the respondent State had to ensure enforcement of the two decisions in the applicants' favour, including in particular the removal of the church from the applicants'

favour, including in particular the removal of the church from the applicants' land, at the latest within three months of this judgment becoming final.

### \* **Holocaust denial is not protected by the European Convention on Human Rights (03/10/2019)**

In its Chamber judgment in the case of **Pastörs v. Germany** (*application no. 55225/14*) the European Court of Human Rights held, **unanimously**, that **the applicant's complaint under Article 10 (Freedom of expression) was manifestly ill-founded and had to be rejected**, and, **by four votes to three that there had been no violation of Article 6 § 1 (Right to a fair trial)** of the European Convention on Human Rights.

The case concerned the conviction of a *Land* deputy for denying the Holocaust during a speech in the regional Parliament. The Court found in particular that the applicant had intentionally stated untruths to defame Jews. Such statements could not attract the protection for freedom of speech offered by the Convention as they ran counter to the values of the Convention itself. There was thus no appearance of a violation of the applicant's rights and the complaint was inadmissible.

The Court also examined a complaint by the applicant of judicial bias as one of the Court of Appeal judges who had dealt with his case was the husband of the first-instance judge. It found no violation of his right to a fair trial because an independent Court of Appeal panel with no links to either judge had ultimately decided on the bias claim and had rejected it.

### \* **Lack of civilian service as an alternative to military service precluded recognition of conscientious objection, in breach of the Convention (17/10/2019)**

In its Chamber judgment in the case of **Mushfig Mammadov and Others v. Azerbaijan** (*application no. 14604/08*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 9 (Right to freedom of conscience, thought and religion)** of the European Convention on Human Rights.

The case concerned the applicants' refusal on religious grounds to serve in the army. The Court observed that the criminal prosecutions and convictions of the applicants on account of their refusal to perform military service had stemmed from the fact that there was no alternative service system under which individuals could benefit from conscientious objector status. That amounted to an interference which had not been necessary in a democratic society. The case highlighted an issue relating to the lack of legislation on civilian service as an alternative to military service in Azerbaijan. The enactment of such a law corresponded to a commitment entered into by Azerbaijan on its accession to the Council of Europe and was also a



requirement under the country's own Constitution.

**\* Spanish supermarket cashiers covertly filmed by security cameras did not suffer a violation of their privacy rights (17/10/2019)**

In its Grand Chamber judgment in the case of **López Ribalda and Others v. Spain** (*applications nos. 1874/13 and 8567/13*) the European Court of Human Rights held, **by 14 votes to three**, that there had been: **no violation of Article 8 (Right to respect for private and family life)** of the European Convention on Human Rights, and, **unanimously** that there had been **no violation of Article 6 § 1 (Right to a fair trial)**.

The case concerned the covert video-surveillance of employees which led to their dismissal. The Court found in particular that the Spanish courts had carefully balanced the rights of the applicants – supermarket employees suspected of theft – and those of the employer, and had carried out a thorough examination of the justification for the video-surveillance. A key argument made by the applicants was that they had not been given prior notification of the surveillance, despite such a legal requirement, but the Court found that there had been a clear justification for such a measure owing to a reasonable suspicion of serious misconduct and to the losses involved, taking account of the extent and the consequences of the measure. The domestic courts had not exceeded their power of discretion (“margin of appreciation”) in finding the monitoring proportionate and legitimate.

**\* Bosnia and Herzegovina must amend legislation which would enable democratic elections to be held in Mostar (29/10/2019)**

In its Chamber judgment in the case of **Baralija v. Bosnia and Herzegovina** (*application no. 30100/18*) the European Court of Human Rights held, **unanimously**, that there had been: **a violation of Article 1 of Protocol No. 12 (General prohibition of discrimination)** to the European Convention on Human Rights.

The case concerned a legal void which made it impossible for the applicant, a local politician living in Mostar, to vote or stand in elections. The Court found that that legal void had been created by the authorities' failure to enforce a 2010 Constitutional Court ruling concerning arrangements for voting in local elections in Mostar and telling the authorities to harmonise the relevant legislation with the Constitution. That had in turn led to a situation where the last local elections in Mostar had been held in 2008 and the city had been governed since 2012 by a mayor who did not have the required democratic legitimacy. Such a situation was incompatible with the rule of law. The Court could not therefore accept the Government's justification for the prolonged delay in enforcing the ruling, namely the difficulties in

establishing a long-term and effective power-sharing mechanism for the city council so as to maintain peace and to facilitate dialogue between the different ethnic groups in Mostar. The State had therefore failed to comply with its duty to take measures to protect Ms Baralija from discriminatory treatment on the grounds of her place of residence and to hold democratic elections in Mostar. It also held, **unanimously**, under **Article 46 (Binding force and implementation)** that the State had to amend the relevant legislation, at the latest within six months of this judgment becoming final.

**\* Greek system for exempting schoolchildren from religious education classes breaches the European Convention (31/10/2019)**

The case **Papageorgiou and Others v. Greece** (*application nos. 4762/18 and 6140/18*) concerned compulsory religious education in Greek schools. In its Chamber judgment 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, interpreted in the light of **Article 9 (Freedom of thought, conscience, and religion)**. The Court stressed that the authorities did not have the right to oblige individuals to reveal their beliefs. However, the current system in Greece for exempting children from religious education classes required parents to submit a solemn declaration saying that their children were not Orthodox Christians. That requirement placed an undue burden on parents to disclose information from which it could be inferred that they and their children held, or did not hold, a specific religious belief. Moreover, such a system could even deter parents from making an exemption request, especially in a case such as that of the applicants, who lived on small islands where the great majority of the population owed allegiance to a particular religion and the risk of stigmatisation was much higher.

**\* Switzerland would breach the Convention by returning to Afghanistan an Afghan convert to Christianity (05/11/2019)**

In its Chamber judgment in the case of **A.A. v. Switzerland** (*application no. 32218/17*) the European Court of Human Rights held, **unanimously**, that there would be: **a violation of Article 3** of the European Convention on Human Rights in the event of the applicant's return to Afghanistan.

The case concerned the removal from Switzerland to Afghanistan of an Afghan national of Hazara ethnicity who was a Muslim convert to Christianity. The Court noted that according to many international documents on the situation in Afghanistan, Afghans who had become Christians or who were suspected of conversion would be exposed to a risk of persecution by various groups. It could take the form of State persecution and result in the death penalty.



The Court also noted that, while the authenticity of the applicant's conversion in Switzerland had been accepted by the Federal Administrative Court, it had not carried out a sufficient assessment of the risks that could be personally faced by the applicant if he were returned to Afghanistan.

The Court found in particular that the file did not contain any evidence that the applicant had been questioned about the everyday practice of his Christian faith since his baptism in Switzerland and how he could, if returned, continue to practise it in Afghanistan, in particular in Kabul, where he had never lived and where he said that he would be unable to rebuild his future life.

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





# INFORMATION ON THE COURT

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## The building of the Constitutional Court:

The Constitutional Court of the Republic of Kosovo, since it became functional in 2009, has been located in the building of the former Kosovo Protection Corps - KPC, located in the center of Prishtina, in the area of Pejton. The position of the Court in the center of the capital city, symbolizes an equal access to all citizens and other authorized parties to the Constitutional Justice. Over the years this building has been adapted according to the needs and nature of work of the Constitutional Court. This has been carried out with the support of our donors, as in the case of construction of the Courtroom of the Court which has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the Library of the Court which was entirely supported by the GIZ Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011.

The building of the Court has a usable office space of 784 m<sup>2</sup> and is used by 65 employees.



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