



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

Prishtina, on 01 February 2021  
Ref. no.: RK 1696/21

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**cases no. KI147/20, KI148/20, KI149/20, KI150/20, KI151/20 and  
KI152/20**

Applicant

**Nezir Neziri and 5 others**

**Constitutional review of 6 decisions of the Supreme Court of the  
Republic of Kosovo, rendered between 10 December 2019 and 13 July  
2020**

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

composed of:

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

#### **Applicant**

1. Referral KI147/20 was submitted by Nezir Neziri; Referral KI148/20 was submitted by Hisni Vojvoda; Referral KI149/20 was submitted by Sejdi Sejdija; Referral KI150/20 was submitted by Hajdin Vojvoda; Referral KI151/20 was submitted by Gani Mëziu, and Referral KI152/20 was submitted by Jusuf Aliu (hereinafter: the Applicants).

2. The Applicants, Nezir Neziri, Hisni Vojvoda, Sejdi Sejdiya, Hajdin Vojvoda and Gani Mëziu are residing in the Municipality of Skenderaj, while the Applicant Jusuf Aliu is residing in the Municipality of Prishtina. The Applicants before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) are represented by Jahir Bejta, Director of the Association “Ngritja e Zërit”.

### **Challenged decisions**

3. The Applicants challenge six (6) decisions of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), as follows:
  1. Nezir Neziri (KI147/20) challenges Decision Rev. No. 422/2019, of 10 December 2019, which was served on him on 24 January 2020;
  2. Hisni Vojvoda (KI148/20) challenges Decision Rev. No. 188/2020, of 18 June 2020;
  3. Sejdi Sejdiya (KI149/20) challenges Decision Rev. No. 37/2020, of 6 February 2020, which was served on him on 10 July 2020;
  4. Hajdin Vojvoda (KI150/20) challenges Decision Rev. No. 189/2020, of 13 July 2020;
  5. Gani Mëziu (KI151/20) challenges Decision Rev. No. 187/2020, of 18 June 2020; and
  6. Jusuf Aliu (KI152/20) challenges Decision Rev. No. 124/2020, of 2 June 2020, which was served on him on 19 July 2020 (hereinafter: the challenged Decisions).

### **Subject matter**

4. The subject matter of the Referrals is the constitutional review of the challenged Decisions, which allegedly violate the rights of the Applicants guaranteed by Article 21 [General Principles], paragraph 2 of Article 22 [Direct Applicability of International Agreements and Instruments], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR).
5. The Applicant Nezir Neziri (KI147/20) has requested the return to previous situation, regarding the deadline for submitting the Referral to the Constitutional Court, in accordance with Article 50 [Return to the Situation] of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo, (hereinafter: the Law), as he was not able to submit the Referral within four (4) months.

## **Legal basis**

6. The Referrals are based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 47 [Individual Requests] and 50 [Return to the Previous Situation] as well as Rule 32 [Filing of Referrals and Replies] of Rules of Procedure No. 01/2018 of the Constitutional Court of the Republic of Kosovo, (hereinafter: the Rules of Procedure).

## **Proceedings in Court**

7. On 6 October 2020, the Applicants submitted their Referrals to the Court.
8. On 12 October 2020, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur for case KI147/20 and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).
9. On the same date, in accordance with paragraph (1) of Rule 40 (Joinder and Severance of Referrals) of the Rules of Procedure, the President of the Court ordered the joinder of Referrals KI148/20, KI149/20, KI150/20, KI151/20 and KI152/20, with Referral KI147/20.
10. On 21 October 2020, the Court notified the Applicants and the Supreme Court about the registration and joinder of the Referrals.
11. On the same date, the Court requested the Basic Court in Mitrovica, Branch in Skenderaj (hereinafter: the Basic Court in Mitrovica) to submit the powers of attorney, which prove when the Applicants in cases KI147/20 and 149/20, were served with the challenged Decisions of the Supreme Court. The Court also requested the Basic Court in Prishtina to submit the power of attorney proving when the Applicant KI152/20 was served with the challenged Decision of the Supreme Court.
12. On 27 October 2020, the Basic Court in Prishtina submitted to the Court the power of attorney, which proves that the Applicant in case KI152/20 was served with the challenged Decision on 29 July 2020.
13. On the same date, the Basic Court in Mitrovica submitted to the Court the powers of attorney, which prove that the Applicant in case KI147/20 was served with the challenged Decision on 24 January 2020, while the Applicant in case KI149/20, was served with the challenged Decision on 10 July 2020.
14. On 20 January 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

## Summary of facts

15. Between 25 October 2013 and 25 June 2019, the Applicants individually filed a lawsuit with the Basic Court in Mitrovica, Branch in Skenderaj, while Applicant KI52/20 filed a lawsuit with the Basic Court in Prishtina. All Applicants filed their lawsuits against the Government of the Republic of Serbia, for compensation of material and non-material damage caused to them during the war, between 1998 and 1999.
16. During the period 12 January 2015 and 14 October 2019, the Basic Court in Mitrovica and the Basic Court in Prishtina, with individual decisions: C. No. 100/2018; C. No. 475/2018; C. No. 390/2013; C. No. 470/2018; C. No. 180/2019; and C. No. 2107/19, dismissed the Applicants' lawsuits as inadmissible and declared themselves incompetent to decide on those lawsuits.
17. The Applicants filed individual appeals with the Court of Appeals against the abovementioned decisions of the Basic Court in Mitrovica and the Basic Court in Prishtina, on the grounds of essential violations of the provisions of the contested procedure. The Applicants requested that the decisions in question of the basic courts be annulled and that the Applicants' Referrals be declared admissible.
18. Between 10 May 2016 and 20 November 2019, the Court of Appeals, by individual decisions: Ac. No. 2116/19; Ac. No. 5375/19; Ac. No. 2027/15; Ac. No. 5370/19, Ac. No. 5761/19; and Ac. No. 4162/19, rejected the Applicants' appeals and upheld the Decisions of the Basic Court in Mitrovica and the Basic Court in Prishtina.
19. Each of the Applicants, individually, filed a separate request for revision with the Supreme Court, alleging essential violation of the provisions of the contested procedure. They requested that their requests for revision be upheld, that the decisions of the Court of Appeals and the Basic Courts be annulled, that their cases be remanded to the basic courts for retrial or that the decisions of the Court of Appeals be modified so that their lawsuits could be approved.
20. In their complaints, the Applicants also alleged that there are other provisions of the Law on Contested Procedure (hereinafter: the LCP), which regulate the issue of jurisdiction for their cases. According to them, in this case the provision of Article 28 of the LCP should be applied, which has to do with the jurisdiction of the courts in disputes with an international element.
21. Between 10 December 2019 and 13 July 2020, the Supreme Court, by individual Decisions: Rev. No. 422/2019, Rev. No. 188/2020, Rev. No/2020, Rev. No. 189/2020, Rev. No. 287/2020 and Rev. No. 124/2020, rejected the requests for revision of each of the Applicants as ungrounded.
22. The main arguments of the Supreme Court, in each of these decisions, were generally as follows: that the issue raised in the lawsuits does not fall within the jurisdiction of any court of the country, due to the fact that in the present case the norms of collision of the Law come to expression, according to which

the jurisdiction of a court of another country is established. By the provision of Article 37.1 of the LCP, it is foreseen that if the law does not determine the exclusive territorial jurisdiction of any other court, the court of general jurisdiction for the responding party is competent to process the case. Moreover, the Supreme Court argued that when it comes to disputes with a foreign element, the domestic court has jurisdiction only if this international jurisdiction is expressly derived from an international agreement or from the law itself, as established in Article 28 of the LCP. Therefore, the Supreme Court reasoned that the claims of the revision do not stand that in the present case the provisions of Article 28 of the LCP, to which the claimant refers, apply, which determines the jurisdiction of our courts in disputes with an international (foreign) element, as that they cannot be applied in this case because, here we are not dealing with foreign natural persons, nor with foreign legal persons, but with a foreign state, with which until now the state of Kosovo in the territory of which the damage was caused, no international agreement (bilateral, etc.) has been concluded on the jurisdiction of local courts for these types of disputes. The Supreme Court also emphasized that in the present case the claimants' allegation of the revision that we are dealing with the chosen territorial jurisdiction, in accordance with Article 47 and Article 51 of the LCP is not grounded, because according to the assessment of this court, both courts have correctly assessed that according to the provision of Article 39.1 and 2 of the LCP to decide in this dispute against the Republic of Serbia the court of general territorial jurisdiction is the court in which territory is located the Headquarters of the Government of Serbia.

### **Applicants' allegations**

23. The Applicants' allegations are identical, therefore, the Court presents them as the same allegations.
24. The Applicants allege that the decisions of the Supreme Court have violated their rights guaranteed by Articles: 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution as well as Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR).
25. The Applicants have three main allegations: (i) the application of the principle "*per loci*" [*ratione loci*], which, according to the Applicants, means that the regular courts have jurisdiction to review the lawsuits on the basis of the place where material and moral damage has been caused; (ii) the obligation for the application of international human rights standards by the regular courts; (iii) their right to judicial protection of rights and the right of access to justice.
26. The Applicants initially refer to the issue of territorial jurisdiction, namely the principle "*per loci*". In this regard, they allege that the regular courts "*have erroneously applied the applicable law with reference to the territorial jurisdiction of the Basic Court [...], because, the territorially competent court for adjudicating legal cases is always the court in which territory the crime*

*the moral, namely material damage was committed! This definition and valid legal position also coincides with the interest of the injured party, the principle of economy in judicial and administrative proceedings, as well as in accordance with the international principle – per loci”.*

27. The Applicants, referring to Article 22 of the Constitution, allege that as long as the rights and freedoms “*guaranteed by international Conventions, Agreements and Instruments, guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and have priority, in case of conflict, over the provisions of laws and other acts of public institutions*”, consequently, “*the filing of indictments before domestic courts is also based on the international principle per loci [...]. In the following, the Applicants underline that “[...] Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Universal Declaration of Human Rights, paragraph 15, provide for the right to a fair trial [...]*”.
28. Further, the Applicants, referring to Article 21, paragraph 2 of the Constitution, allege that the regular courts “*have not applied advanced international human rights standards. One of the standards is to enable the injured party to initiate the issue of compensation for moral and material damage caused as a result of direct action by the Serbian authorities and the inaction of the authorities in preventing violations of the laws which were in force at the time when the crimes were committed, Article 185 of the LOR (Official Gazette of the former SFRY, No. 29/78) and the violation of International Conventions by the Republic of Serbia against the Albanian civilian population [...]*”.
29. The Applicants, referring to Article 54 of the Constitution, also state that they “*have been denied the right to judicial protection, the right of access to domestic justice and the institutional guarantee for the protection of citizens’ rights [...]*”.
30. The Applicants further refer to some examples from the international case law where, in their view, the World War II victims were allowed “*to file individual indictments in the domestic courts for compensation for damage caused by Germany*”. In this regard, they specify that in the cases of Greece and Italy, individuals have been given the opportunity to seek compensation for “*damages caused by Germany during World War II in accordance with international principle ‘per loci’*”.
31. Beyond the common allegations set out above, as a separate issue, the Applicant Nezir Neziri (KI147/20), requests that in relation to the deadline for the submission of his Referral, the previous situation be returned, in accordance with Article 50 [Return to the Previous Situation] of the Law. In support of this allegation, he argues that he was not able to submit the Referral within four (4) months, as he did not have access to the necessary documentation to submit his Referral to the Court, stating that “*as a result of the Pandemic we were ordered to vacate all offices from the former KPC facility, as it was planned to turn the facility into a canteen for the accommodation and healing of those affected by Covid 19. [...] We displaced*

*all working materials and the office inventory in the premises of the Regional Water Company in Mitrovica-Unit in Skenderaj*". In this regard he attaches a Certificate from the Regional Water Company "Mitrovica", of 5 October 2020, which states that *"We confirm that the documentation of the NGO "Ngritja e Zërit", even the entire office inventory has remained in the premises of the water supply facility from 09.03.2020 to 01.10.2020"*.

32. Finally, the Applicants request the Court to annul the decisions of the regular courts and remand the cases for reconsideration.

### **Assessment of the admissibility of the Referral**

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

34. As an initial note, the Court notes that the subject matter of these joint referrals, as well as the allegations raised in these referrals, are similar to a number of other referrals for which the Court has already decided (see Constitutional Court cases: KI73/17, KI78/17 and KI85/17, Applicant *Istref Rexhepi and 28 others*, Resolution on Inadmissibility, of 23 October 2017, cases KI97/17, KI99/17, KI115/17 and KI121/17, Applicant *Mala Mala, Ali Salihu, Nurije Beka and Xhevat Xhinovci*, Resolution on Inadmissibility, of 10 January 2018; cases KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI128/18, Applicant *Fehmi Hoti and 15 others*, Resolution on Inadmissibility, of 19 February 2019; cases KI02/19, KI03/19, KI04/19 and KI05/19, Applicant *Halil Mustafa and 3 others*, Resolution on Inadmissibility, of 20 June 2019, and cases No. KI86/19, KI87/19, KI88/19, KI89/19, KI90/19 and KI91/19, Applicant *Ibrahim Zenuni and five others*, Resolution on Inadmissibility of 16 January 2020, and cases KI20/20, KI21/20, KI22/20 and KI23/20, Applicants: *Hazir Hakolli and 3 others*, Resolution on Inadmissibility of 22 July 2020).

35. Returning to the circumstances of the present cases, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

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

*(...)*

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

36. In addition, the Court refers to Article 47 [Individual Requests], Article 48 [Accuracy of the Referral], Article 49 [Deadlines] and Article 50 [Return to the Previous Situation] of the Law, which establish:

Article 47  
[Individual Requests]

*1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.”*

Article 48  
[Accuracy of the Referral]

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

Article 49  
[Deadlines]

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

37. The Court further refers to the Rules of Procedure, namely paragraphs (1) and (2) of Rule 39 [Admissibility Criteria], which establish the following:

Rule 39 of the Rules of Procedure  
[Admissibility Criteria]

*“(1) The Court may consider a referral as inadmissible if:  
[...]*

*c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant,  
and  
[...].”*

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

38. The Court finds that all the Applicants are authorized parties, who challenge an act of a public authority, after the exhaustion of all legal remedies. The Applicants also clarified the rights and freedoms which have allegedly been violated, in accordance with Article 48 of the Law.
39. The Court also notes that all Applicants, except Nezir Neziri (KI147/20), submitted the Referral in accordance with the four (4) month deadline from the date of receipt of the challenged decision established in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.



40. Regarding the Applicant Nezir Neziri (KI147/20), the Court notes that he was served with the challenged Decision Rev. No. 422/19 of the Supreme Court on 24 January 2020, while he submitted the Referral (KI147/20) to the Constitutional Court on 6 October 2020. So, his Referral was submitted after the deadline of 4 (four) months.
41. However, the abovementioned Applicant requests the Court to return the deadline to the previous situation, regarding the deadline for submitting the Referral to the Constitutional Court, in accordance with Article 50 of the Law. In this regard, the Court notes the Applicant KI147/20 justifies the request for return of the deadline stating that he was not able to submit the Referral within four (4) months, as he did not have access to the necessary documentation to submit his Referral to the Court. He adds that *“as a result of the Pandemic we were ordered to vacate all offices from the former KPC facility, as it was planned to turn the facility into a canteen for the accommodation and healing of those affected by Covid 19. [...] We displaced all working materials and the office inventory in the premises of the Regional Water Company in Mitrovica-Unit in Skenderaj”*. In support of his arguments, he attaches a Certificate from the Regional Water Company “Mitrovica” of 5 October 2020, which states that *“We confirm that the documentation of the NGO “Ngritja e Zërit”, even the entire office inventory has remained in the premises of the water supply facility from 09.03.2020 to 01.10.2020”*.
42. In this regard, the Court recalls Article 50 [Return to the Previous Situation] of the Law, which stipulates that: *“If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired”*.
43. Therefore, according to Article 50 of the Law, in order to approve the request for return to the previous situation, he must meet the following requirements:
1. the Applicant must prove that without his/her fault has not been able to submit the referral within the set deadline;
  2. the Applicant must submit the request for returning to previous situation within 15 days from the removal of obstacle;
  3. the Applicant has justified the request in question; and,
  4. one year or more have not passed from the day the deadline set in this Law for submitting the referral to the Court has expired.
44. In assessing the Applicant’s request for return of the deadline, the Court first considers that the Applicant KI147/20, without his fault, has not been able to file the Referral within the set deadline. This happened, as the necessary documents to submit his Referral to the Constitutional Court, have been closed in the facility of the Regional Water Company “Mitrovica”, as a result of the circumstances created by the pandemic Covid 19, from 9 March 2020 until 1 October 2020. This fact is confirmed by the Certificate issued by the Regional

Water Company “Mitrovica”, dated 5 October 2020. Secondly, the Applicant has submitted a request for return to the previous situation within fifteen (15) days from the removal of obstacle, as provided by Article 50 of the Law, as the Applicant’s Referral was submitted to the Court on 6 October 2020, while access to the necessary documents to file the Referral was created on 1 October 2020 (as evidenced by the Certificate issued by the Regional Company of the Water Supply “Mitrovica”). Third, the Applicant reasoned his request for return to previous situation, regarding the deadline for submitting the Referral to the Constitutional Court. Fourth, the Applicant has submitted his Referral less than one year from the day when the deadline set by this Law for submitting the Referral to the Court has expired. The Court also notes that at the moment when the Applicant was denied access to the necessary documents, on 9 March 2020 there was still a deadline to file his Referral, as he was served with the challenged decision on 24 January 2020.

45. Therefore, the Court finds that the Applicant, KI147/20, has substantiated and justified his request for return to the previous situation, regarding the deadline for submitting the Referral to the Constitutional Court, in accordance with Article 50 of the Law.
46. Therefore, the Court approves the Referral (KI147/20) of the Applicant Nezir Neziri for the return to previous situation, regarding the deadline for submitting the Referral to the Constitutional Court. Consequently, the Applicant’s deadline for submitting the Referral returns to the situation it was from the day when he was denied access to the necessary documents, specifically until 9 March 2020.
47. Based on the above, it results that the Referral KI147/20 of the Applicant Nezir Neziri meets the criteria set out in Article 49 of the Law regarding the deadline for submitting the Referral, given that his request for return of the deadline was approved by the Court.
48. Further, the Court, in relation to all the Applicants’ Referrals, must consider whether the admissibility criterion set out in Rule 39 (2) of the Rules of Procedure is met. The Court reiterates that Rule 39 (2) of the Rules provides that *“The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim”*.
49. In this regard, the Court recalls that the Applicants allege that the regular courts have violated certain rights protected by the Constitution, the ECHR and the UDHR, with particular emphasis on the right to judicial protection of rights and the right to a fair trial.
50. In this regard, the Court notes that the Applicants allege that the regular courts have erroneously interpreted the applicable law when referring to the territorial jurisdiction of the Basic Court. They further claim that the court in which territory the damage was caused is the competent court to adjudicate their cases. As a result, according to the Applicants, they were denied the right to judicial protection and access to justice.

51. The Court considers that the Applicants' allegations, in substance, relate to the interpretation by the regular courts of the relevant legal provisions that regulate their territorial jurisdiction, namely the competence to decide regarding the claims of the Applicants.
52. The Court emphasizes its view that correct and complete determination of factual situation, as well as relevant legal interpretations, in principle, fall within the jurisdiction of the regular courts. The role of the Constitutional Court is to ensure that the standards and rights guaranteed by the Constitution are respected and consequently it cannot act as a "fourth instance court" (see *mutatis mutandis*, regarding the "fourth instance" doctrine, the cases of the Constitutional Court, KI86/11, Applicant *Milaim Berisha*, Resolution on Admissibility of 5 April 2012, paragraph 33; as well as joined cases KI73/17, KI78/17 and KI85/17, Applicants *Istref Rexhepi and 28 others*, Resolution on Admissibility, of 27 November 2017, paragraphs 46 and 47).
53. In the present case, the Court notes that the Supreme Court considered the Applicants' allegations regarding the interpretation made by the Court of Appeals and the Basic Court of the relevant legal provisions related to the competence to adjudicate in the cases of the Applicants.
54. In reviewing the Applicants' allegations, the Supreme Court reasoned that the Basic Court and the Court of Appeals have correctly applied the provisions of the Law on Contested Procedure when they found that they had no jurisdiction to adjudicate in these court cases. Therefore, the Supreme Court rejected the Applicants' allegations, reasoning that the general territorial jurisdiction is in the court in the territory of which is the seat of the Government of the Republic of Serbia which is not in the territory of the Kosovo courts.
55. Thus, in its decisions, the Supreme Court, *inter alia*, held that: "*in the present case the provisions of Article 28 of the LCP, to which the claimant refers, and which determine the jurisdiction of our courts in disputes with an international (foreign) element cannot be applied in the present case, because, here we are not dealing with foreign natural persons, nor with foreign legal entities, but with a foreign state, with which until now the state of Kosovo in the territory of which the damage was caused, no international agreement (bilateral, etc.) has been concluded on the jurisdiction of local courts for these types of disputes. The Supreme Court also stated that the claim of the claimant's revision that in this case we are dealing with the territorial jurisdiction chosen under Article 47 and Article 51 of the LCP does not stand, as both courts have rightly assessed that pursuant to the provision of Article 39.1 and 2 of the LCP to decide in this dispute against the Republic of Serbia, of the general territorial jurisdiction is the court in which territory the seat of the Government of Serbia is located*".
56. The Court considers that the findings of the Basic Court, the Court of Appeals and of the Supreme Court were reached after a detailed examination of all the arguments and interpretations presented by the Applicants. In this way, the Applicants were given the opportunity to present at all stages of the procedure the arguments and legal interpretations they consider relevant to their cases.

57. Therefore, the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair and that the allegation of arbitrary legal interpretation by the regular courts cannot be substantiated.
58. With regard to the Applicants' allegations as "*to their right to judicial protection and access to justice*", the Court refers to the case law of the European Court of Human Rights (ECtHR), which it is obliged to refer to in accordance with Article 53 of the Constitution. Regarding the latter, the Court highlights its case law built on the ECtHR case law, where it was noted that there are procedural barriers imposed by the principle of sovereign state immunity - as one of the fundamental principles of international public law - in relation to judicial proceedings that may be conducted against a state in the domestic courts of another state (see the joined cases of the Constitutional Court, KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI125/18, Applicant *Fehmi Hoti and 15 others*, cited above, paragraphs 58 and 59, see, *mutatis mutandis*, also the ECtHR cases cited in the aforementioned case of the Constitutional Court, *Jones and Others v. United Kingdom*, applications 34356/06 and 40528/06, Judgment of 14 January 2014 and *Al-Adsani v. United Kingdom*, application 35763/97 Judgment of 21 November 2001).
59. In addition, in the case *Al-Adsani v. the United Kingdom*, the ECtHR argued as follows: "*The right of access to court may be subject to limitations, unless the essence of the very right is impaired. Such limitations must pursue a legitimate aim and be proportionate. The recognition of sovereign state immunity in civil proceedings follows the legitimate aim of respecting the international law [...]. As far as proportionality is concerned, the Convention should, as far as possible, be interpreted in accordance with other rules of international law, including those relating to the immunity of States. Thus, the measures taken by the state which reflect the general rules of international law on the immunity of States cannot, in principle, be regarded as a disproportionate limitation of the right of access to the court*". Such an attitude, as far as concerns the tension between the principle of sovereign immunity of states and the right to access to justice (court), was emphasized by the International Court of Justice (see, for example, case: *Germany v Italy; Greece as an intervening party*, Judgment of 3 February 2012).
60. In the light of the foregoing arguments, the Court considers that it is important to emphasize the fact that the regular courts of the Republic of Kosovo, in the Applicants' cases, did not address their right to seek compensation for damage, but only with respect to the territorial jurisdiction of the courts of Kosovo to conduct proceedings against another state.
61. Referring to the Applicants' allegations regarding the application of the Geneva Convention in their court cases, the Court notes that the Applicants have only referred to this Convention, but did not provide further arguments in relation to this allegation (see recent authority in this regard, the joined cases of the Constitutional Court, KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI105/18, KI106/18, KI107/18,

KI116/18, KI117/18, KI119/18 and KI125/18, Applicant *Fehmi Hoti and 15 others*, cited above).

62. The Court emphasizes once more its general view that the mere fact that the Applicants do not agree with the outcome of the decisions of the Supreme Court, or of other regular courts, as well as a mere mentioning of articles of the Constitution or international instruments, are not sufficient to build a reasoned allegation of constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, *mutatis mutandis*, case of the Constitutional Court, KII36/14, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, paragraph 33).
63. The Court also recalls that the presented facts and the Applicants' allegations are almost identical to some of the previous Referrals, where the Court found that they were inadmissible, as manifestly ill-founded on constitutional basis (see cases KI73/17, KI78/17 and KI85/17, Applicant *Istref Rexhepi and 28 others* cited above, cases KI97/17, KI99/17, KI115/17 and KI121/17, Applicant *Mala Mala, Ali Salihu, Nurije Beka and Xhevat Xhinovci*, cited above; cases KI96/18, KI97/18, KI98/18, KI99/18, KI100/18, KI101/18, KI102/18, KI103/18, KI104/18, KI10S/18, KI106/18, KI107/18, KI116/18, KI117/18, KI119/18 and KI128/18, Applicant *Fehmi Hoti and 15 others* cited above; cases KI02/19, KI03/19, KI04/19 and KI05/19, Applicant *Halil Mustafa and 3 others*, cited above; and cases KI86/19, KI87/19, KI88/19, KI89/19, KI90/19 and KI91/19, Applicant *Ibrahim Zenuni and five others*, cited above. All these referrals have raised allegations almost identical to the referrals treated in this decision and, as in those cases, even in these joint cases, the Court considers that the latter should be declared as ungrounded on constitutional basis.
64. In sum, the Court considers that the Applicants in their Referrals do not prove that the proceedings before the regular courts have resulted in a violation of their rights guaranteed by the Constitution, namely Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.
65. Therefore, the Applicants' Referrals are manifestly ill-founded on constitutional basis, and are therefore inadmissible, as established in Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, in accordance with paragraph 7 of Article 113 of the Constitution, Articles 47, 48 and 50 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 20 January 2021, unanimously:

### DECIDES

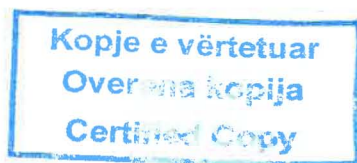
- I. TO APPROVE the request of the Applicant KI147/20, for return to the previous situation, regarding the deadline for submitting the Referral to the Constitutional Court;
- II. TO DECLARE the Referrals of Applicants KI147/20, KI148/20, KI149/20, KI150/20, KI151/20 and KI152/20 inadmissible;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bekim Sejdiu

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only.*