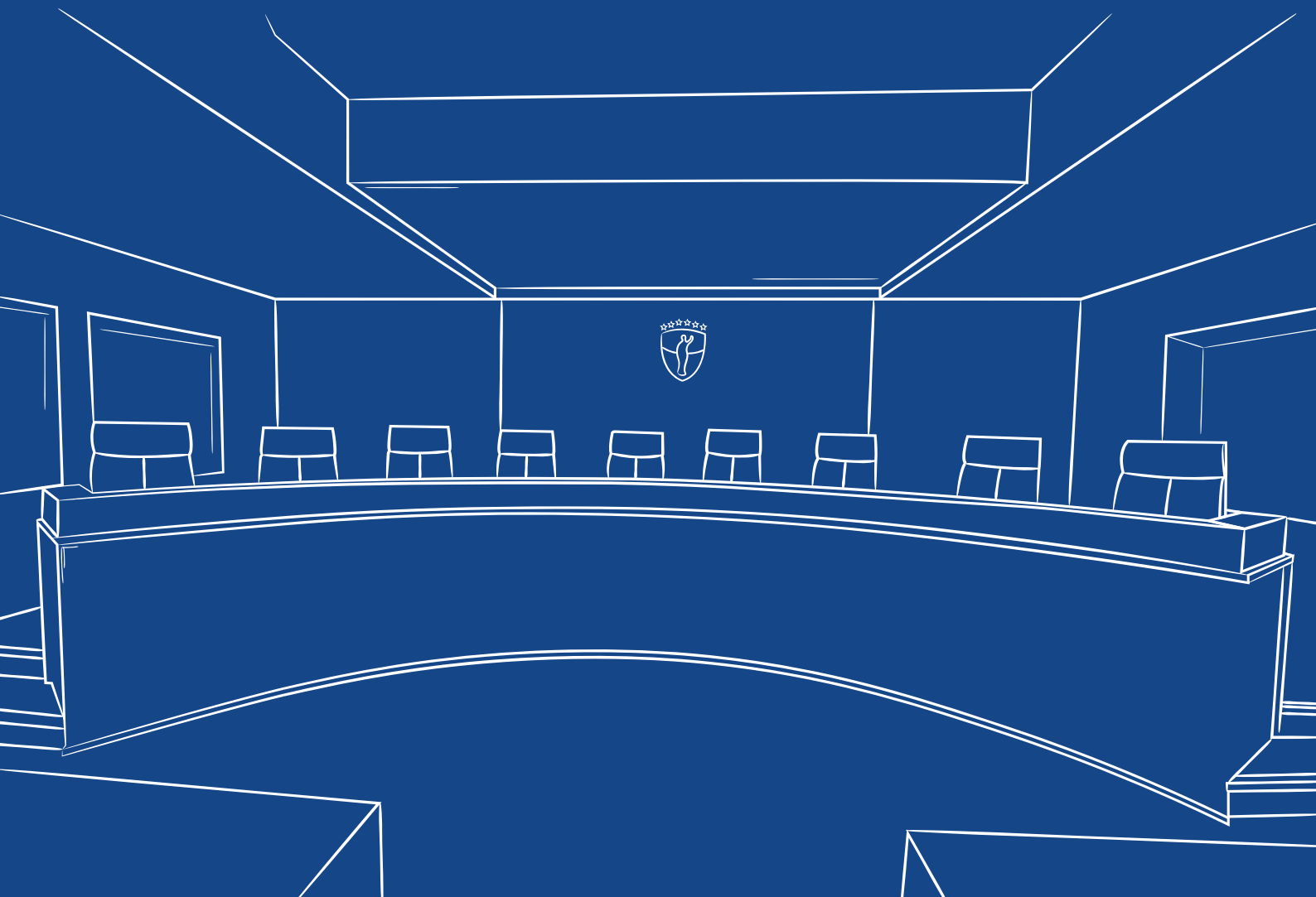
REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

PRACTICAL GUIDE ON ADMISSIBILITY CRITERIA:

INDIVIDUAL REFERRALS



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ABBREVIATIONS

ECtHR	European Court of Human Rights
Court	Constitutional Court of the Republic of Kosovo
ECHR	European Convention on Human Rights
Constitution	Constitution of the Republic of Kosovo
Law	Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo
Rules of Procedure	Rules of Procedure of the Constitutional Court of the Republic of Kosovo no. 01/2023

I. INTRODUCTION

The purpose of this Guide is to inform the legal community, in particular the representatives of the parties and the parties themselves, regarding the admissibility criteria for individual referrals submitted to the Constitutional Court of the Republic of Kosovo, based on paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo. Noting the importance of understanding the admissibility criteria by the parties before the Court, in order for their referrals to have the opportunity to undergo further examination on the merits, this practical Guide aims to clarify the case law of the Constitutional Court regarding the interpretation of the admissibility criteria for individual referrals.

Paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution legitimizes legal and natural persons as authorized parties to challenge the acts of public authorities which, according to them, have violated their fundamental rights and freedoms guaranteed by Chapter II [Fundamental Rights and Freedoms] of the Constitution. The admissibility criteria represent the standards that a referral submitted to the Constitutional Court must meet in order for the claims of the party in that referral to be subject to assessment on merits. As far as individual referrals are concerned, these criteria are primarily specified by paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution, and further detailed by Law no. 03/L-121 on the Constitutional Court and the Rules of Procedure of the Constitutional Court no. 01/2023.

The Law on the Constitutional Court, by articles 46 (Admissibility), 47 (Individual Requests) and 48 (Accuracy of the Referral), specifies what are known as the procedural admissibility criteria. Such are considered the obligation to exhaust legal remedies, filing the referral to the Court within the specified period, identify and specify the act of the public authority, as well as the fundamental rights and freedoms guaranteed by the Constitution, which the applicant claims to have been violated. The Rules of Procedure of the Court further clarify some aspects related to the admissibility of an individual referral. Rule 34 (Admissibility Criteria) of the Rules of Procedure, in addition to defining the obligation to fulfill the procedural admissibility criteria of the referral, further details the obligation of the party to complete the referral in cases when a referral is considered to be manifestly ill-founded. This rule also specifies the criteria related to the Court's jurisdiction, namely the criteria of whether a referral is within the material, personal, temporal and territorial jurisdiction of the Court. Further, Rule 54 (Dismissal and Rejection of Referrals) of the Rules of Procedure sets out the procedure for summarily rejection of a referral, including the basis for rejection when a referral (i) is not subject to review due to non-compliance of the admissibility criteria or because it is unclear, or (ii) when a referrals is repetitive of a referral already decided by the Court.

By elaborating on the case law of the Court related to the admissibility criteria of an individual referral, this Guide, among others, aims to (i) guide the applicants and/or their legal representatives regarding the preparation of the referrals; (ii) reducing the number of referrals submitted to the Constitutional Court, which do not meet the procedural criteria to be examined on the merits; and therefore, (iii) the increase of the number of admissible referrals, which may be subject to further examination on merits.
The nature and structure of this document is inspired by the Practical Guide on Admissibility Criteria of the European Court of Human Rights, publicly accessible through the website of this Court, as well as through the webpage of the Constitutional Court.

In seven substantive chapters and relying on the case law of the Constitutional Court and, in some instances, that of the European Court of Human Rights, this Guide outlines and elaborates certain criteria and aspects regarding the admissibility of individual referrals. The admissibility criteria for the individual referrals, as they originate from the Constitution and the Law on the Constitutional Court, and which are detailed through the Rules of Procedure of the Constitutional Court and illustrated through case law, are presented here organized in thematic groups and subgroups.

Following the first introductory chapter, Chapter II deals with the set of admissibility criteria that stand out as the procedural bases for admissibility. These include a range of issues related to the authorized party, including but not limited to (i) the elaboration of what constitutes a natural or legal person in the context of being an authorized party/applicant; (ii) the circumstances under which the applicant's victim status is recognized in the context of the admissibility of an individual referral; and (iii) wthe requirements in terms of representation and the specifics and consequences resulting from the withdrawal of an individual referral in the context of examining the admissibility of the latter. Chapter III continues with the elaboration of exhaustion of legal remedies as a constitutional criterion for the admissibility of individual referrals. Illustrated through the relevant consolidated case law of this Court but also that of the European Court of Human Rights, this chapter breaks down this criterion in its formal-procedural and substantive sense. Chapter IV deals in detail with the criterion of admissibility for an individual referral to be submitted before the Court four (4) months from the date when the final court decision regarding the case was served on the applicant. This part first introduces the purpose and spirit of setting a legal deadline and further elaborates on the notion of a final judgment as a decisive fact in relation to the calculation of the strict deadline. Further, Chapter V continues with the elaboration of the constitutional and legal criterion for the party to specify the rights and freedoms that it claims to have been violated. Chapter VI deals with manifestly ill-founded referrals, as a category of inadmissible referrals in circumstances where the conclusion about inadmissibility derives from a *prima facie* examination of the merits of the referral. Elaborated here are the sub-categories developed through the case law of the European Court of Human Rights, which relate to the claims of the (i) "*fourth instance*"; (ii) clear or apparent absence of violation; (iii) the claims that are "*unsubstantiated and unsupported*" and (iv) the "*confusing or far-fetched*" claims. Chapter VII elaborates on the admissibility of an individual referral in the context of its compatibility with the Court's jurisdiction, broken down into material, personal, temporal and territorial jurisdiction. Finally, Chapter VIII is dedicated to the dismissal and rejection of a referral, specifically the circumstances when a case is no longer an active controversy, does not present a dispute, when the referral is incomplete or unclear, repetitive or when it constitutes an abuse of the right to petition.

It should be noted, however, that this document is informative in nature. The elaborations and any references used in this Guide must be understood and interpreted in the context of the factual and legal circumstances of the relevant case. Therefore, since each case contains almost unique factual and legal aspects and the assessment of admissibility is subject to a special case-by-case review by the Court, the reference in this Guide does not necessarily lead to a specific result before the Court.

Furthermore, it should be clarified that the content of this document is not exhaustive. This document elaborates the admissibility criteria based on the case law of the Court, insofar as it is consolidated at the time of its publication. Regarding those cases which have not yet been dealt with by the Court and, therefore, its case law is not elaborated, the Guide refers to the relevant case law of the European Court of Human Rights. Taking into account the dynamic nature and continuous development of case law, this Guide, as well as the similar Guide of the European Court of Human Rights, will be subject to continuous updating.

All decisions referred to in this Guide are published on the Court's website and are accessible in Albanian and Serbian, as official languages in the Republic of Kosovo, as well as in English and in certain cases, also in French. All referenced decisions of the European Court of Human Rights are accessible in the relevant languages on its website.

II. PROCEDURAL GROUNDS FOR INADMISSIBILITY

1. AUTHORIZED PARTY

Paragraph 1 of Article 47 (Individual Requests) of the Law on the Constitutional Court

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.*

[...]

Rule 34 (Admissibility Criteria) (1) (a)of the Rules of Procedure

(1) The Court may consider a referral as admissible if:
(a) The referral is filed by an authorized party;
[...]

Based on paragraph 7 of article 113 [Jurisdiction of the Authorized Parties] of the Constitution, individuals are authorized to address the Court regarding alleged violations by public authorities of their individual rights and freedoms, as guaranteed by the Constitution, only after having exhausted all legal remedies established by law. For the purposes of individual complaints, the concept of the individual referred to in paragraph 7 of the aforementioned article of the Constitution, is interpreted in conjunction with paragraph 4 of article 21 [General Principles] of the Constitution, according to which, the fundamental rights and freedoms provided for in the Constitution, also apply to legal persons, to the extent applicable. Based on these two constitutional provisions, individuals, namely natural and legal persons, are parties authorized to address the Court regarding allegations of violations of the relevant constitutional rights and freedoms by public authorities, under the conditions set forth in the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Court.

For the purposes of elaborating the concept of the authorized party and the criteria that must be met in this context, emphasis should also be placed on the wording of paragraph 7 of article 113 [Jurisdiction of the Authorized Parties] of the Constitution and which, in relation to individuals, among others, stipulates raising of claims before the Court concerning their "*individual*" rights and freedoms. The Law on the Constitutional Court establishes the same requirement in paragraph 1 of its article 47 (Individual Referrals), referring to "*his/her individual*" rights and freedoms in relation to the individual. Based on the joint reading of these two provisions, including on the case law of the ECtHR, it should be specified that for the purposes of fulfilling the criterion of the authorized party before the Court, the individual must have the status of a victim. According to the case law of the ECtHR and that of the Court, and as will be elaborated in more detail below, the status of the victim may be (i) *direct*; (ii) *indirect*; or (iii) *potential*.

1.1 CATEGORIES OF AUTHORIZED PARTIES/APPLICANTS

For the purposes of paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution, with allegations for violations of their constitutional rights and freedoms by public authorities, before the Court, may appear: (i) natural persons; (ii) legal persons; and (iii) groups of natural and/or legal persons, provided that they have the relevant victim status. In the following, the general principles applicable to each of these categories will be detailed, as elaborated through case law of the Court and/or the ECtHR when the case law of the Court has not been sufficiently shaped or consolidated.

1.1.1 Natural persons

Any natural person can submit a referral to the Court alleging a violation of the relevant individual rights and freedoms by the public authorities of the Republic of Kosovo.

Moreover, through the relevant case law, the Court has recognized the capacity of authorized parties before the Court even of family members who submitted referrals on behalf of deceased persons, insofar as the qualification of the status of an indirect victim has been argued. Such are two (2) Court cases related to allegations of violations of the positive obligations of the state to protect the right to life guaranteed under article 25 [Right to Life] of the Constitution and article 2 (Right to life) of the ECHR, namely (i) the parents *Gëzim and Makfire Kastrati* regarding the referral submitted on behalf of their deceased daughter D.K. (see the case of the Court KI41/12, with Applicants *Gëzim and Makfire Kastrati,* Judgment of 26 February 2013, paragraphs 41-45); and (ii) daughter *Velerda Sopi* regarding the referral submitted on behalf of her mother, namely the deceased S.M. (see the case of the Court KI129/21, with Applicant *Velerda Sopi*, Judgment of 7 March 2023, paragraphs 102-109). Moreover, in the context of allegations for violation of the right to private and family life, guaranteed under article 36 [Right to Privacy] of the Constitution and article 8 (Right to respect for private and family life) of the ECHR, the Court has recognized the capacity of an authorized party to the parent *Ahmet Frangu* in the referral submitted on behalf of his deceased son (see the case of the Court KI56/18, with Applicant *Ahmet Frangu*, Judgment of 22 July 2020, paragraphs 56-67).

On the other hand, the capacity of an authorized party has also been granted to the respective applicants who died after submitting the relevant referral to the Court. In such circumstances, the Court has continued to deal with the respective referral or not, depending on whether the respective heirs have requested that the Court continue to deal with the referral or not(see, for example, Court case KI77/20, with Applicant *Kujtim Zarari*, Resolution on Inadmissibility, of 11 November 2020, paragraphs 30-36; in contrast to Court's case KI161/20, with Applicant *Bedri Gashi*, Resolution on Inadmissibility, of 10 September 2021, paragraphs 43-46). Although the Court does not yet have case law, according to the ECtHR, in exceptional cases, the procedure in a case can be continued even after the death of the relevant applicant, if it is assessed that the case is not related to an issue that represents only individual interest for the applicant, but there is a wide interest in establishing general standards and expanding jurisprudence for the protection of human rights (see the ECHR case, *Paposhvili v. Belgium*, no. 41738/10, paragraphs 129-133).

The Court has also recognized the capacity of an authorized party with respect to foreign citizens, insofar as they contested acts of the public authorities of the Republic of Kosovo. Such is the example of the case KI39/20, with the applicant *Cihan Ozkan*, a citizen of the Republic of Turkey, and who was represented before the Court by a lawyer of the Republic of Kosovo, with the authorization of the applicant's wife. The Court, taking into account the specific circumstances of the applicant and based on the case law of the ECtHR, recognized the latter as an authorized party before the Court (see Court case KI39/20, with applicant *Cihan*

Ozkan, cited above, Resolution on Inadmissibility, of 27 January 2021, paragraphs 61-81; see also Court case KI230/19, with applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraphs 80-82). The same approach has been followed by the Court in a dispute concerning legal persons with headquarters in a foreign country (see, among others, Court case KI123/19, with applicant "*SUVA Rechtsabteilung*", Judgment of 13 May 2020, paragraph 51).

> While the Court has not yet dealt with any such case, based on the case law of the ECtHR, (i) the lack of capacity to act is not an obstacle to submitting a referral to the Court even without the consent of the respective custodian (see, among others, the case of ECtHR, *Zehentner v. Austria*, no. 20082/02, Judgment of 16 July 2009, paragraph 39); and (ii) the natural motherhood of a mother who has been deprived of her parental rights is sufficient as an authorization to bring a case to the Court on behalf of her children to protect their interests (see, *inter alia*, the ECtHR case of *Scozzari and Giunta v. Italy*, Nos. 39221/98 41963/98, Judgment of 15 September 1998, paragraph 138).

In addition, groups of individuals may address the Court insofar as they contest the violation of their individual rights and freedoms before it. Such an approach has been established since the Court's establishment, based on the case law of the ECtHR, among others, through the case KI40/09, with the applicant *Imer Ibrahimi and 48 other former employees of the Kosovo Energy Corporation* , Judgment of 16 June 2010, paragraphs 34-48; and was further consolidated, among others, through cases (i) KI182/20, with applicants *Sedat Kovaçi, Servet Ergin, Ilirjana Kovaçi and Sabrije Zhubi*, Judgment of 20 January 2022, paragraphs 52-54; and (ii) KI140/22, with applicant *Imer Mustafa and others*, Resolution on Inadmissibility, of 22 December 2022, paragraph 36.

1.1.2 Legal persons

As noted above, based on paragraph 4 of article 21 [General Principles] of the Constitution, legal persons are authorized parties before the Court insofar as they raise allegations pertaining to the violation of their fundamental rights and freedoms. Such an approach has been defined since the Court's establishment, based on the case law of the ECtHR, among others, through the case KI41/09, with applicant *AAB University-Riinvest L.L.C*,, Resolution on Inadmissibility, of 25 November 2009, paragraph 14; and was further consolidated, among others, through Court case KI75/21, with applicants "*Abrazen LLC*", "*Energy Development Group Kosova LLC", "Alsi& Co. Kosovo LLC" and "Building Construction LLC*", Judgment of 19 January 2022, paragraph 51; and KI35/18, with applicant "*Bayerische Versicherungsverbrand*", Judgment of 11 December 2019, paragraph 40). Beyond the legal persons that are registered as such based on the applicable legislation, namely the applicable Law on Business Organizations, in determining whether the party before the Court has the status of a legal person, the Court has also assessed other applicable laws, such as the case with the law applicable to the Privatization Agency of Kosovo, which defines PAK as a legal entity and, therefore, an authorized party before the Court (see, among others, the Court case KI25/10, with the applicant Privatization Agency of Kosovo, Judgment of 30 March 2011, paragraph 39).

Moreover, and based on the case law of the Court, the capacity of the legal person and, therefore, of an authorized party before the Court, based on paragraph 4 of article 21 [General Principles] and paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution, is also granted to: (i) state institutions, including municipalities, with the latter having the right to challenge the acts of public authorities based

on paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution, in addition to the authorization based on paragraph 4 of article 113 [Jurisdiction and Authorized Parties] of the Constitution to challenge the constitutionality of laws or acts of the Government that violate municipal responsibilities or diminish the revenues of the municipality (see, among others, Court cases KI82/21, with applicants *Municipality of Gjakova*, Judgment of 9 September 2021, paragraph 75; KI31/18, with applicant *Municipality of Peja*, Judgment of 12 April 2019, paragraph 112; KI149/16, with applicant *Municipality of Klina*, Resolution on Inadmissibility, of 20 October 2017, paragraph 36; and KI57/16, with applicant *Water and Waste Regulatory Office*, Resolution on Inadmissibility, of 4 July 2017, paragraph 24; (ii) political entities (see, among others, Court cases KI207/19, with applicants *The Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, Judgment of 1 December 2020, paragraph 80; KI27/20, with applicant *Vetëvendosje! Movement*, Judgment of 22, July 2020, paragraphs 40-41; and KI59/21, with applicant *Partia Demokratike e Kosovës*, Resolution on Inadmissibility, of 22 July 2021, paragraph 37); (iii) non-governmental organizations (see, among others, Court cases KI229/19, with applicant *Non-Governmental Organization "Association for Culture, Education and Schooling AKEA"*, Resolution on Inadmissibility, of 20 January 2021, paragraph 64; and KI20/15, with applicant *Non-Governmental Organization FINCA - Kosovo*, Resolution on Inadmissibility of 31 July 2015); (iv) religious communities (see, among others, Court case KI126/18, with applicant *Council of the Islamic Community in Gjakova*, Resolution on Inadmissibility of 5 February 2020, paragraph 70); (v) sports institutions and clubs (see Court cases KI37/19, with applicant *Kosovo Taekwondo Federation*, Resolution on Inadmissibility, of 11 December 2019, paragraphs 57-58; and KI88/20, with applicant *Football Club "Liria",* Resolution on Inadmissibility, of 30 September 2020, paragraphs 18-19); and (vi) trade unions (see, among others, the case of the Court KI10/22, with applicant *Trade Union of the Institute of Forensic Medicine*, Judgment of 18 July 2022, paragraph 44).

1.2 VICTIM STATUS

As explained above, based on paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution and paragraph 1 of article 47 (Individual Requests) of the Law on the Constitutional Court, individuals are authorized to raise before the Court allegations of violation of "*their*" rights and freedoms by public authorities. The condition that the individuals address the Court only in relation to the violation of their individual rights and freedoms means that the latter must have the status of a victim before the Court. Therefore, the Court, based also on the case law of the ECtHR, has taken the position that the Constitution does not provide for the concept of *actio popularis*, which would enable any individual to challenge before the Court certain legal provisions or acts of public authorities with the allegation of protecting the public interest and/or constitutional order (see, among others, Court case KI30/19, with applicant *Isni Kryeziu*, Resolution on Inadmissibility, of 3 April 2019, paragraphs 28-30).

Through its case law, the Court has also clarified that individuals are not parties authorized to challenge a law. Having said that, there may be exceptions from this principle, and the circumstances in which this may be the case, have been clarified in the Court case KI185/21, with applicant *"CO COLINA" LLC*. Through this case, the Court clarified that individuals can have victim status in cases where they challenge the constitutionality of a law, only if it is argued that the relevant individual (i) is directly affected by the law in question; and (ii) if, in relation to the relevant law, there are no subsequent enforcement measures by a public authority (see, Court cases KI136/19, with applicant *"CO COLINA" LLC*, Resolution on Inadmissibility, of 28 April 2021, paragraphs 81-96; and KI185/21, with applicant *"CO COLINA" LLC*, Judgment of 8 February 2023, paragraphs 77-136).

However, based on the case law of the ECtHR but also that of the Court, the term "*victim*" cannot be interpreted only formally and in isolation from the circumstances of the case and the content of the relevant referral (see, among others, the Court's case KI10/22, cited above, paragraphs 44-48; and see also ECtHR case *Gorraiz Lizarraga and others v. Spain*, no. 62543/00, Judgment of 27 April 2004, paragraph 38). In certain cases, the existence of victim status may be related to the type of violations that have allegedly been committed and the handling of the merits of the respective case (see, among others, the ECtHR case, *Siliadin v. France*, no. 73316/01, Judgment of 26 July 2005, paragraph 63). The burden of proof, regarding the status of the victim, namely whether it falls on the relevant applicant or the public authority, depends on the circumstances of the case and the content of the relevant referral (see, among others, the case of the ECtHR, *N.D. and N.T. v. Spain*, Nos. 8675/15 and 8697/15, paragraphs 83-88).

In what follows, the case law of the ECtHR and the Court will be elaborated, in relation to the categories of the status of the victim, respectively regarding the (i) direct; (ii) indirect; or (iii) potential victim status.

1.2.1 Direct victim

As explained above, referrals must be submitted before the Court by individuals who claim to be the victim of a violation of one or more fundamental rights and freedoms guaranteed by the Constitution. The latter, based on paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution and paragraph 1 of article 47 (Individual Requests) of the Law on the Constitutional Court, must prove and argue that they were "*directly affected*" by the measures of the authorities against which they complain (see, among others, Court cases (i) KI29/09, KI32/09 and KI47/09, with applicants *Teki Bokshi, Avdi Rizvanolli and Qaush Smajlaj*, Resolution on Inadmissibility, of 17 December 2010, paragraph 22; (ii) KI32/21, with applicant *Hasan Shala*, Resolution on Inadmissibility of 30 June 2021, paragraphs 43-47; (iii) KI175/19, with applicant *Ismajl Zogaj*, Judgment of 1 July 2021, paragraph 60; (iv) KI39/20, cited above, Resolution 64 and 65; and (v) KI118/10, with applicant *the Insurance Association of Kosovo*, Decision on Inadmissibility, of 23 May 2011, paragraphs 14-19).

Also, through its case law, the Court has clarified that individuals can challenge the decisions of the Government, the decisions of the Assembly and the decrees of the President of the Republic of Kosovo, provided that they have exhausted the effective remedies as prescribed by law (see, cases of the Court KI147/18, with applicant *Arbër Hadri*, Resolution on Inadmissibility, of 4 September 2019, paragraphs 51-61, in the context of the right of individuals to challenge the decisions of the Assembly; KI186/21, with applicant *Faik Miftari*, Resolution on Inadmissibility, of 10 December 2021, paragraphs 31-33, in the context of the right of individuals to challenge Government decisions; KI74/21, with applicant *Halim Krasniqi*, Resolution on Inadmissibility, of 27 October 2022, paragraph 44, in the context of the right of individuals to challenge the decrees of the President; and also see the case in which the Court elaborated in more detail the cases when the decrees of the President of the Republic are subject to legality control by regular courts, namely Court Judgment KI214/21, with applicant *Avni Kastrati*, Judgment of 7 December 2022, paragraphs 92-129).

Furthermore, individuals may exceptionally have the status of a "*victim*" in cases when they challenge the constitutionality of a law, however, such a status can only be granted exceptionally and only if it is argued that the respective individual (i) is directly affected by the law in question; and (ii) if in relation to the relevant law, there are no subsequent enforcement measures by a public authority (see Court cases KI136/19, with applicant *"CO COLINA" LLC*, cited above, paragraph 96; and KI185/21, with applicant *"CO COLINA" LLC*, cited above, paragraphs 77-136).

In principle, individuals cannot challenge the constitutionality of decisions issued by public authorities in proceedings in which they were not party to (see, Court case KI137/19, with applicant *Arlind Morina*, Resolution on Inadmissibility of 2 September 2020, paragraphs 33-38; and see also ECtHR case *Centro Europa 7 Srl and Di Stefano v. Italy*, No. 38433/09, Judgment of 7 June 2012, paragraph 92). However, for the purposes of admissibility, third parties are also considered authorized parties before the Court, when their interest is directly affected by the final outcome of the court proceedings (see Court case KI149/11, with applicant *Shefqet Aliu*, Resolution on Inadmissibility, of 5 December 2012, paragraphs 27-37; and see also ECtHR case, *Margulev v. Russia*, No. 15449/09, Judgment of 8 October 2019, paragraph 36). On the other hand, the Court, through the relevant case law, clarified that the fact that an individual is a party to the proceedings before the regular courts, does not mean that the latter automatically enjoys the status of "*victim*" before the Court, if his individual rights are not affected directly by the challenged act. Consequently, the participation or not of the applicant in the proceedings before the regular courts is not decisive to determine the status of "*victim*" as this notion is autonomous and is interpreted based on the meaning of the authorized party stipulated by the Constitution, the Law on the Constitutional Court and the Rules of Procedure (see, among others, Court case KI32/21, with applicant *Hasan Shala*, cited above, paragraphs 33-43).

1.2.2 Indirect victim

Individuals whose fundamental rights and freedoms have been affected indirectly may appear as authorized parties before the Court. In the context of the indirect victim, the practice of the Court is especially consolidated in the circumstances of the allegations before the Court regarding the failure of the state to fulfill its positive obligations for the protection of the right to life under the guarantees of article 25 [Right to Life] of the Constitution and article 2 (Right to life) of the ECHR (see Court cases KI41/12, cited above, related to the submission of the referral by the parents of the deceased daughter; and KI129/21, cited above, regarding the submission of the referral by the daughter of the deceased mother). Similarly, the Court also acted in the context of the right to privacy and family life guaranteed by article 36 [Right to Privacy] of the Constitution in conjunction with article 8 (Right to respect for private and family life) of the ECHR, taking into account the special circumstances of the respective case (see, case KI56/18, cited above, regarding the submission of the referral by the parent of the deceased). Therefore, in principle, based on the case law of the ECtHR and the Court, the status of indirect victim has been granted to close family members or relatives who have managed to prove that they have a legitimate interest in the case in question (see also the case of the Court KI77/20, cited above, paragraphs 30-36, the case in which the Court accepted the status of the indirect victim, the wife of the applicant who had passed away after the submission of the corresponding referral in the Court).

However, according to the Judgments in cases KI149/18, KI150/18, KI151/18, KI152/18, KI153/18 and KI154/18, the Court, based on the practice of the ECtHR, further clarified that this status is enjoyed only by family members close or next-of-kin, who have managed to prove that they have a legitimate and important interest in the case of the deceased (see, among others, Court cases KI149/18, KI150/18, KI151/18, KI152/18, KI153/18, with applicant *Xhavit Aliu and 5 others*, resolution on Inadmissibility, of 19 July 2019, paragraphs 62-75). In this context, the status of indirect victim can be granted to persons who raise allegations about the death or disappearance of their relative as well as in certain cases, unmarried partners, sisters and brothers, children, grandchildren (see, cases KI149/18, KI150/ 18, KI151/18, KI152/18, KI153/18, cited above, paragraphs 68-70; and KI11/20, with applicant *Fllanza Pozhegu*, Resolution on Inadmissibility, of 11 November 2020, paragraphs 46-56).

Moreover, the Court, through its case law and based on that of the ECtHR, has clarified that the status of the direct or indirect victim is also related to the nature of the rights challenged before the Court, namely if the respective rights can be qualified as "*transferable*" rights or not. According to the clarifications given through the case law of the Court, the rights related to article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, in principle, but with exceptions, are considered "*non-transferable*" rights. In this context, the Court did not recognize with the status of an indirect victim (i) the son of the respective deceased when the decisions of the regular courts were challenged before the Court with allegations of violation of the right to a fair and impartial trial guaranteed by article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, during which the deceased father of the applicant was a party to the proceedings (see Court cases KI149/18, KI150/18, KI151/18, KI152/18, KI153/18, cited above, paragraph 74); and (ii) the sister of the respective deceased when the decisions of the regular courts have been challenged before the Court with allegations of violation of the right to a fair and impartial trial guaranteed by article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, throughout which the deceased sister of the respective applicant was a party to the proceedings (see Court case KI11/20, with applicant *Fllanza Pozhegu*, cited above, paragraph 56). The Court acted similarly also in the circumstances of the case KI67/18, when a decree of the President of the Republic, according to which the sentence of the person who had murdered the applicant's father was pardoned, was challenged before the Court, whereby the Court clarified that the challenged act had not affected her fundamental rights and freedoms and consequently, did not grant the status of an indirect victim (see Court case KI67/18, with applicant *Arbenita Arifi*, Resolution on Inadmissibility, of May 14, 2019, paragraphs 40-49).

Also, and even though the Court has no case law in this context, the circumstances in which the status of an indirect victim can be granted to legal persons, namely commercial companies or non-governmental organizations, may also be relevant. Based on the case law of the ECtHR, in the context of the category of commercial companies, the ECtHR has made a distinction between cases when the shareholders of a certain company challenge the measures which directly affect their shares or the measures which affect the commercial companies in which different persons are shareholders. In the former case, the shareholders have the status of indirect victims, whereas in the latter case, the relevant shareholders cannot enjoy this status (see the ECHR cases *Agrotexim and others v. Greece*, no. 14807/89 , Judgment of 24 October 1995, paragraphs 65-66; and *Alberti and others v. Hungary*, no. 5294/14, Judgment of 7 July 2020, paragraphs 122-123). Exceptions to this principle, based on the case law of the ECtHR, are the cases when the parties satisfy the Court that the raising of the case by the commercial company itself is impossible (see the ECtHR case *Alberti and others v. Hungary*, cited above, paragraphs 124 and 135-145).

In the context of the category of non-governmental organizations, while they may have the status of a direct victim when their rights and freedoms are affected by an act of a public authority, based on the case law of the ECtHR, the latter, in principle, cannot enjoy victim status if their rights and/or interests are not affected, even in cases when relevant non-governmental organizations have been established to protect potential groups of victims (see, ECtHR case, *Nencheva and others v. Bulgaria*, application no. 48609/06, Judgment of 18 June 2013, paragraphs 90 and 93). However and exceptionally, in certain circumstances, when the relevant non-governmental organizations represent the interests of applicants in various proceedings before local courts and it means that they are authorized to act on behalf of an individual, they may enjoy the status of victim (see ECtHR case *Gorraiz Lizarraga and others v. Spain*, no. 62543/00, paragraphs 37-39).

1.2.3 Potential victims

As explained above, based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, the individual may raise claims before the Court regarding the violation of his/her constitutional rights and freedoms, thus having the status of a direct victim or, exceptionally, that of an indirect victim. The Court does not yet have case law regarding the status of the potential victim. However, according to the case law of the ECtHR, such a status can be recognized exceptionally in circumstances when, for example, a foreigner has been ordered to leave the country while the order has not yet been implemented, but the implementation of the latter will expose the relevant applicant to violations of fundamental rights and freedoms in the country to which he would have to be sent (see the ECtHR case, *Soering v. The United Kingdom*, Judgment of 7 July 1989). In such cases the relevant applicant must prove the possible violation of rights and freedoms committed personally against him/her, and a general suspicion in this context, does not suffice (see, ECtHR case *Senator Lines GmbH, v. 15 states of the European Union* No. 56672/00, Decision of 10 March 2004).

1.2.4 Actio Popularis

Through its consolidated case law, the Court has clarified that the Constitution does not provide for the concept of *actio popularis*, a concept that enables an individual to file before the Court claims through which he alleges to protect the public interest. More specifically, an individual cannot address the Court with abstract allegations related to the measures of public authorities which have not personally affected him. Therefore, in these cases, the Court has concluded that the respective applicants are not authorized parties to submit a referral before the Court, as they cannot be considered victims of the violation of their fundamental rights and freedoms. These cases, in which the Court has clarified the lack of authorization of the relevant party to address it through the concept of *actio popularis*, include but are not limited to cases when (i) an association had challenged a law of the Assembly (see, the case of the Court KI118/10, with applicant *Insurance Association of Kosovo*, Resolution on Inadmissibility of 14 November 2011, paragraphs 14-19); (ii) a trade union had requested the issuance of legal acts related to pensioners (see, Court case KI84/12, with applicant *Independent Union of Pensioners and of Labour Disabled Persons of Kosovo*, Resolution on Inadmissibility of 6 December 2012, paragraphs 26-29); (iii) a non-governmental organization requested the constitutional review of a protocol between two institutions (see, Court case KI43/09, with applicant *Lévizja FOL*, Resolution on Inadmissibility of 16 May 2011, paragraphs 21-24); (iv) an individual requested the constitutional review of the regulation of a ministry (see, Court case KI30/19, *Isni Kryeziu*, Resolution on Inadmissibility of 3 April 2019, paragraphs 28-32); (v) some individuals requested the constitutional review of a Government decision (see, Court case KI170/21, *Arianit Sllamniku and others*, Resolution of 10 December 2021, paragraphs 36-42); and (vi) an individual requested the assessment of a decision of the Municipal Assembly of Prizren (see, Court case KI117/11, with applicant *Ridvan Hoxha*, Resolution on Inadmissibility, of 11 July 2012, paragraphs 21-26).

1.2.5 Loss of victim status

The issue of whether a party before the Court, namely the applicant, has the status of a victim is relevant throughout the proceedings of assessing the referral. When it is relevant to assess whether a party's victim status before the Court continues to exist, the latter must assess the status of the applicant and the relevant circumstances after the submission of the referral. In the case KI11/09, with applicant *Tomë Krasniqi*, the Court, after submitting the referral to the Court through which the relevant applicant complained about the obligation to pay for public television through electricity bills, had assessed whether the latter still had

the status of a victim, taking into account that the contractual agreement between the Energy Corporation of Kosovo and the Radio and Television of Kosovo was terminated, and the relevant applicant no longer had the obligation to pay the fee for public television through the electricity bill, and consequently, no longer had the status of victim (see, case KI11/09, with applicant *Tomë Krasniqi*, Decision to Strike the Referral, of 17 May 2011, paragraphs 40-48). Also, in the cases KI58/12, KI66/12 and KI94/12, the Court found that the decisions of the municipalities regarding the conditionality of the payment of obligations to public enterprises, which had been challenged before the Court, had been annulled in the meantime, and, therefore, the case had been resolved in favor of the applicants, and as a result, they no longer enjoyed the status of victim (see Court cases KI58/12, KI66/12 and KI94/12, with applicants *Selatin Gashi, Halit Azemi and the group of municipal councilors of the MA of Viti*, Decision to Strike out the Referral, of 5 July 2013, paragraphs 49-51).

Also, based on the case law of the ECtHR, in principle, the applicant (i) looses the victim status if, after submitting the relevant referral, the public authority has found a violation of his/her rights and freedoms and has awarded relevant compensation, and which must be adequate and sufficient (see the ECtHR case, *Scordino v. Italy*, no. 36813/97, Judgment of 29 March 2006, paragraph 180); while the applicant (ii) does not loose the status of a victim if, after submitting the relevant referral, the public authority has established a violation of his/her rights and freedoms, but has not awarded him/her the corresponding compensation, unless the individual has effective legal remedies available to him/her to request adequate compensation (see, ECtHR case, *Kudić v. Bosnia and Herzegovina*, no. 28971/05, Judgment of 9 December 2008, paragraphs 17-18).

1.3 REPRESENTATION

Based on Article 21 (Representation) of the Law on the Constitutional Court, the parties during the proceedings before the Court, may be represented themselves or by a representative authorized by the party. The authorization to represent an applicant before the Court is also specified in letter (c) of item 2 of Rule 25 (Filing of Referrals and Replies) of the Rules of Procedure. Based on its case law, in principle, in those referrals in which the relevant parties have not submitted the authorization for representation, based on Rule 26 (Registration of Referrals and Deadlines for Filing Replies) of the Rules of Procedure, the Court addresses the parties with a request for completing the documentation, namely submitting a valid authorization for representation before Court. In those cases when the referral submitted to the Court is not completed with the authorization according to the request of the Court, the latter summarily rejects the corresponding referral. The case law of the Court treats such applicants who fail to submit the relevant authorization to the Court as alleged representatives, and in such circumstances, in the absence of an authorization, does not elaborate in its decision on the details of the facts and the circumstances of the case and the relevant allegations (see, among other things, the cases of the Court, KI25/21, with applicant, *Ymer Koro*, as *the alleged representative of K.Lj. and K.B.*, Decision to reject the referral, of 21 July 2021, paragraphs 22-32; and KI137/20, with applicant, *Ali Latifi*, as *the alleged representative of M.S.*, Decision to reject the referral, of 11 November 2020, paragraphs 20-22). According to the case law of the Court, while the relevant authorization must be signed by the applicant himself, exceptionally, the authorization for the lawyer of the applicant signed by his wife, taking into account the specific circumstances of the relevant case, has been accepted (see case of the Court KI39/20, with applicant *Cihan Ozkan*, cited above, paragraphs 61-81).

Moreover, according to the ECtHR practice, there are exceptions when a person is represented before the ECtHR by another person. In this context, minors are, in principle, represented before the Court by their parents. In these cases, paternity/maternity is sufficient for him/her as authorization to file a case before the Court. Therefore, parents who have not been deprived of parental rights have the right to lodge a request on behalf of the minor. However, the ECtHR in one case assessed that even though the mother has been deprived of her parental rights, her status as a natural mother is sufficient for her to submit a request on behalf of her children, to protect her child's rights (see ECtHR case, *Scozzari and Giunta v. Italy*, cited above, paragraph 138).

Exceptionally, also in the context of the victims regarding the right to life, the prohibition of torture or the right to privacy, there should be special considerations regarding the relevant representation. As a result, the ECtHR has in some cases declared admissible the requests of NGOs which initiated the cases on behalf of the victims, for whose representation they did not have authorization. In these cases, the ECtHR emphasized the fact that the victims in question had no relatives nor legal representatives to initiate the cases on their behalf and that the respective NGOs, although absent authorization, (i) had some relations with the respective victims before the latter passed away; as well as/or (ii) the raised claims contained allegations of serious violations of the ECHR, the non-treatment of which would release the state from serious accusations of violations of fundamental rights and freedoms (see, cases of the ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Rumania*, no.47848/08, Judgment of 17 July 2014, paragraphs 104-114; and *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, no. 2959/11, Judgment of 24 March 2015, paragraphs 40-46).

1.4 WITHDRAWAL OF REFERRALS BY PARTIES

Paragraph 1 of Rule 31 (Withdrawal of a Party from the Proceedings) of the Court's Rules of Procedure stipulates that the applicant may withdraw the referral at any time before the review and decision-making of the Court. However, and despite the fact that this is related to the status and/or loss of the victim status, according to paragraph 2 of the same rule, the Court may proceed with the review and decision on the referral, when in its assessment, the continuation of the proceedings is in the interest of the public and/or that of the respect of fundamental human rights and freedoms guaranteed by the Constitution (see Court cases related to individual referrals, when the request of the parties to withdraw the referral was approved, among others, in case KI04/17, with applicant *Z. K.*, Decision to withdraw the referral, of 2 June 2017, paragraph 19; and KI110/17, with applicant *Sekule Stanković*, Decision to withdraw the referral, of 24 May 2018, paragraph 18). Unlike the above-mentioned cases, when the Court has assessed that the continuation of the review of a certain case, despite the request of the relevant party to withdraw the referral, is in the public interest and/or that of the protection of fundamental rights and freedoms, the Court has rejected the request for withdrawal of the referral (see Court cases KO145/21, with applicant *Municipality of Kamenica*, Judgment of 10 March 2022, paragraphs 89-94; KO173/21, with applicant *Municipality of Kamenica*, Judgment of 7 December 2022, paragraphs 76-88).

III. EXHAUSTION OF LEGAL REMEDIES

Paragraph 7 of article 113 of the Constitution

"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."
Paragraph 2 of article 47 (Individual Requests) of the Law on the Constitutional Court
[...]

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."

Rule 34 (Admissibility Criteria) (1) (b) of the Rules of Procedure
"(1) The Court may consider a referral as admissible if:
[...]

(b) All effective remedies foreseen by law against the challenged act have been exhausted..."

1. PURPOSE/MEANING OF THE CONSTITUTIONAL OBLIGATION TO EXHAUST EFFECTIVE LEGAL REMEDIES

Paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution and paragraph 2 of article 47 (Individual Requests) of the Law on the Constitutional Court, as well as subparagraph (b) of paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure, determine the obligation to exhaust legal remedies, which constitutes one of the primary criteria for the admissibility of an individual referral submitted to the Court. This obligation is directly related to respecting the principle of subsidiarity. In this context, the Court, affirming the case law of the ECtHR, has continuously emphasized that the purpose and rationale of the rule to exhaust legal remedies is to offer the relevant authorities, and primarily the regular courts, the opportunity to prevent or remedy alleged violations of the Constitution. According to the case law of the ECtHR and the Court, this rule is based on the assumption reflected in article 32 [Right to Legal Remedies] of the Constitution in conjunction with article 13 (Right to an effective remedy) of the ECHR, that the legal order of the Republic of Kosovo provides effective remedies for the protection of fundamental rights and freedoms guaranteed by the Constitution, before the case is referred to the Constitutional Court (see, among others, Court case KI179/20, with applicant *Kosovo Telecom J.S.C.*, Resolution on Inadmissibility, of 27 January 2021, paragraph 94).

The Court, through its case law, has also clarified that the exhaustion of legal remedies includes two elements: (i) that of exhaustion in the formal-procedural aspect, which means the obligation to utilize the legal remedy, against an act of a public authority, in all instances with full jurisdiction (see, among others,

Court cases, KI219/21, Applicant *Isuf Ferati,* Resolution on Inadmissibility, of 19 July 2022, paragraphs 26 and 28; and KI193/20, Applicant *Bujar Hoti*, Resolution on Inadmissibility, of 5 May 2021, paragraphs 26-28; and ECtHR cases, *Civet v. France*, application no. 29340/95, Judgment of 28 September 1999, paragraph 41; *Demopoulos and others v. Turkey*, applications no. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, Decision of 10 March 2010, paragraphs 69 and 97); and (ii) that of exhaustion in the substantive aspect, which means reporting before regular courts constitutional violations in "*substance/content*", so that the latter have the possibility of preventing and correcting the violation of human rights protected by the Constitution and the ECHR. The Court considers the legal remedies as exhausted only when the applicants, in compliance with the applicable laws, have made use of them in both aspects (see, among others, the cases of the Court, KI71/18, with applicant, *Kamer Borovci, Mustafë Borovci and Avdulla Bajra*, Resolution on Inadmissibility, of November 21, 2018, paragraph 57; KI119/17, with applicant *Gentian Rexhepi*, Resolution on Inadmissibility, of 3 April 2019, paragraph 73; KI154/17 and KI05/18, with applicant *Basri Deva, Afërdita Deva and the Limited Liability Company "BARBAS"*, Resolution on Inadmissibility, of 22 July 2019, paragraph 94; and KI40/20, with applicant *Sadik Gashi*, Resolution on Inadmissibility, of 20 January 2021, paragraphs 66-69).

Based on this obligation, the Court has consistently emphasized that the applicants are responsible, when their respective cases are declared inadmissible by the Court, if they have not used the regular proceedings or have not raised claims for violation of their fundamental rights and freedoms in the proceedings before regular courts (see, among others, Court cases KI139/12, with applicant *Besnik Asllani*, Resolution on Inadmissibility, of 29 January 2013, paragraph 45; KI89/15, with applicant *Fatmir Koçi*, Resolution on Inadmissibility, of 28 January 2015, paragraph 35; KI24/16, with applicant *Avdi Haziri*, Resolution on Inadmissibility, of 15 September 2016, paragraph 39; KI30/17, with applicant *Muharrem Nuredini*, Resolution on Inadmissibility, of 4 July 2017, paragraphs 35- 37; and KI108/18, with applicant, *Blerta Morina*, Resolution on Inadmissibility of 5 September 2019, paragraph 154).

1.1 THE OBLIGATION OF EXHAUSTING LEGAL REMEDIES IN THE FORMAL-PROCEDURAL ASPECT

As noted above, the exhaustion of effective legal remedies before a referral is submitted to the Constitutional Court is a constitutional obligation in the context of individual referrals. Having said this, the Court, based on the case law of the ECtHR, in principle, also specified that the rule of exhaustion of legal remedies should be applied with a "*degree of flexibility and without excessive formalism",* taking into account the context of the protection of fundamental human rights and freedoms (see, among others, Court cases KI57/22 and KI79/22, with applicants *Shqipdon Fazliu and Armend Hamiti*, Judgment of 4 July 2022, paragraph 73, based among others on ECtHR cases, *Ringeisen v. Austria*, No. 2614/65, Judgment of 16 July 1971, paragraph 89; *Vučković and others v. Serbia* [GC] Application No. 17153/11 and 21 other applications, Judgment, of 25 March 2014, paragraph 76; and *Akdivar and others v. Turkey,* no. 21893/93, Judgment of 1 April 1998, paragraph 69).

However, based on the case law of the ECtHR, the Court has also clarified that in the application of this principle with a "*degree of flexibility and without excessive formalism*", several criteria must be assessed and met. More precisely, in all cases, where legal remedies have not been exhausted, to determine whether the latter, in the circumstances of the respective cases, would not be "*effective*", it must be assessed whether (i) the existence of legal remedies is "*sufficiently certain not only in theory, but also in practice*" because the latter, must be able to "*provide solutions to applicants' allegations"* and "*offer a reasonable prospect of success*"; and (ii) the relevant legal remedies are "*available, accessible and effective*", characteristics which must be sufficiently

consolidated in the case law (see, among others, Court cases KI57/22 and KI79/22, with applicants *Shqipdon Fazliu and Armend Hamiti*, cited above, paragraph 74 and KI211/19, with applicants *Hashim Gashi, Selajdin Isufi, B.K., HZ., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I. and S.R*, Resolution on Inadmissibility, of 11 November 2020, paragraphs 56-57; and ECtHR cases *Akdivar and others v. Turkey*, No. 21893/93, Judgment, of 1 April 1998, paragraph 69; *Öcalan v. Turkey*, No. 46221/99, Judgment of 12 May 2005, paragraphs 63-72; and *Kleyn and others v. The Netherlands*, No. 39343/98 and 3 others, Judgment of 6 May 2003, paragraphs 155-162).

In the assessment of the aforementioned criteria, the Court, taking into account the principle of flexible assessment of the exhaustion of legal remedies and adapting of this assessment to the "*special circumstances*" of each case separately, referred to the case law of the ECtHR related to the "*burden of proof*". According to the latter, in the context of the ECtHR, the distribution of the burden of proof is divided between the applicant and the relevant government claiming non-exhaustion (see, regarding the "*distribution of the burden of proof*", *inter alia*, cases of the ECtHR: *Selmouni v. France*, cited above, paragraph 76; *Akdivar and others v. Turkey*, cited above, paragraph 68). In principle, after the claims of the relevant applicant for the lack of a legal remedy, the opposing party, namely the relevant state in the context of the ECtHR, bears the burden of proof that there is a legal remedy that has not been used and which is "*effective*", and only after this, the applicant will have to argue the opposite, namely that (i) the legal remedy defined by law has been exhausted; (ii) for some reason it was not available and was ineffective under the circumstances of the relevant case; or (iii) there have been circumstances that exempt him from the obligation to exhaust legal remedies (see ECtHR cases, *Vučković and Others v. Serbia*, cited above, paragraph 74; *Mocanu and Others v. Romania*, application no. 10865/09, 45886/07 and 32431/08, Judgment, of 17 September 2014, paragraph 225; and *Molla Sali v. Greece*, application no. 20452/14, Judgment, of 19 December 2018, paragraph 89; and the case of the Court KI108/18, Applicant *Blerta Morina*, cited above, paragraph 161).

In addition, the applicants must prove that "*they have done everything that could reasonably be expected of him/her to exhaust legal remedies*" or applicants must prove, by providing relevant case law or other appropriate evidence, that a legal remedy available to them, which they have not used, would fail. Moreover "*mere suspicions*" of an applicant about the ineffectiveness of a legal remedy do not count as a reason to exempt an applicant from the obligation to exhaust legal remedies (see Court cases KI57/22 and KI79/22 , with applicants *Shqipdon Fazliu and Armend Hamiti*, cited above, paragraph 76; KI108/18, with applicant, *Blerta Morina*, cited above, paragraph 154; and the ECtHR case *D.H. and others v. Czech Republic* no. 57325/00, Judgment of 13 November 2007, paragraph 116). In the context of "*mere suspicions*", based on the case law of the ECtHR, the Court has clarified that claims about the backlog of regular courts and/or those related to the possible prolongation of the relevant court proceedings cannot serve as an argument to release an applicant from the constitutional obligation of exhausting the legal remedies provided by law.

Finally, according to the case law of the Court, the flexible assessment of the necessary characteristics of the legal remedy must be made taking into account the special circumstances of each individual case. In making this assessment, the Court, based on the case law of the ECtHR, also takes into account (i) the general "*legal and political*" context; and (ii) the "*special/individual circumstances*" of an applicant (regarding consideration of the overall "*legal and political*" context, see, *inter alia*, ECtHR case*, Akdivar and others v. Turkey*, cited above, paragraphs 68-69 and Court case KI108/18, with applicant *Blerta Morina,* cited above, paragraphs 148 to 193). The Court, in the case KI108/18, rejected the referral as inadmissible due to non-exhaustion of legal remedies even though the request for exemption from this obligation was based, among others, on the *"special circumstances*" of an applicant, including "*the legal and political context"* (regarding the concept of *"special circumstances*" see, *inter alia*, also ECtHR cases *Van Oosterwijck v. Belgium*,

no. 7654/76, Judgment of 6 November 1980, paragraphs 36-40 and relevant references therein; *Öcalan v. Turkey*, cited above, paragraph 67; and *Akdivar and Others v. Turkey*, cited above, paragraphs 67-68 and references therein).

1.1.1 Exemption from the obligation to exhaust legal remedies in the formal-procedural sense

Throughout its case law since establishment, the Court has made an exception from the obligation to exhaust legal remedies in a total of six (6) cases, namely, (i) KI56/09, with applicant *Fadil Hoxha and 59 Others*, Judgment of 22 December 2010; (ii) KI06/10, with applicant *Valon Bislimi*, Judgment of 30 October 2010; (iii) KI99/14 and KI100/14, with applicants *Shyqri Syla and Laura Pula*, Judgment of 3 July 2014; (iv) KI34/17, with applicant *Valdete Daka*, Judgment of 1 June 2017; and (v) KI55/17, with applicant *Tonka Berisha*, Judgment of 5 July 2017. The last three cases are related to the constitutional review of the proposal for Chief State Prosecutor in 2014 and the Presidents of the Supreme Court and the Court of Appeals in 2017, by the Kosovo Prosecutorial Council and the Kosovo Judicial Council, respectively. In these three cases, in the specific circumstances of each, it was assessed that the effective remedy established in the applicable laws for administrative conflict was not effective in the context of assessing the legality of the selection and/or proposal for the three aforementioned positions (see, Court cases KI99/14 and KI100/14, with applicants *Shyqri Syla and Laura Pula*, cited above; KI34/17, applicant *Valdete Daka*, cited above; and KI55/17, with applicant *Tonka Berisha*, cited above). By contrast, in all other cases, when the selection/proposal and/or appointment procedures for senior public officials were contested before the Court, by the institutions of the Republic of Kosovo, including the two aforementioned Councils, it was assessed that the legal remedy defined in the laws applicable to the administrative conflict was effective, and consequently, the latter were declared inadmissible as a result of the non-exhaustion of effective legal remedies prescribed by law (see Court cases KI114/10, with applicant *Vahide Badivuku*, Resolution on Inadmissibility, of 3 June 2011; KI139/11, with applicant *Ali Latifi*, Resolution on Inadmissibility, of 20 March 2012; KI164/20, with applicant *Rafet Haxhaj*, Resolution on Inadmissibility, of 20 January 2021; KI211/19, with applicants *Hashim Gashi, Selajdin Isufi , B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R*, Resolution on Inadmissibility, of 11 November 2020; and KI74/21, with applicant KI74/21, Resolution on Inadmissibility, of 27 October 2022).

The case law of the Court, in the context of the obligation to exhaust effective legal remedies also in the context of the selection/proposal and/or appointment to state functions, has been finally clarified by the Resolution on Inadmissibility of 4 July 2022, in cases KI57/22 and KI79/22.

Beyond the aforementioned exceptions, but in a completely different context, namely in the assessment of allegations for violation of the right to life guaranteed by Article 25 [Right to Life] of the Constitution in conjunction with Article 2 (Right to Life) of the ECHR, the Court assessed that currently in the legal order of the Republic of Kosovo, there is no effective legal remedy to challenge the violation of the aforementioned constitutional rights and, consequently, has released the relevant applicants from the obligation to exhaust legal remedies, assessing the merits of the respective referrals (see, case KI41/12, with applicants *Gëzim and Makfire Kastrati*, Judgment of 25 January 2013, cited above; and KI129/21, with applicant *Velerda Sopi*, cited above, paragraphs 117-121).

Further and in the context of the obligation to exhaust legal remedies in the formal-procedural aspect, based on the case law of the Court, two categories of cases are also relevant, namely, (i) the existence of certain legal remedies and the legal remedies at the discretion of another authority; and (ii) premature referrals, according to the following clarifications.

1.1.2 Existence of certain legal remedies and legal remedies at the discretion of another authority

In the case law of the Court, the circumstances in which (i) there is more than one legal remedy available; and (ii) the exercise of the relevant remedy is at the discretion of another authority, have also been clarified. More precisely and in the context of the first case, based on the case law of the ECtHR, it has been clarified that in case there may be more legal remedies available, it is required that the applicant has used one of them (see, cases of the ECtHR *Moreira Barbosa v. Portugal*, No. 65681/01, Judgment of 29 April 2004; *Jeličić v. Bosnia and Herzegovina*, No. 41183/02, Decision on Admissibility of 15 November 2005; *Karakó v. Hungary*, No. 39311/05, Judgment of 28 April 2009, paragraph 14; and *Aquilina v. Malta*, No. 25642/94, Judgment of 29 April 1999, paragraph 39). While in the context of the second issue, it has been clarified that a legal remedy is not considered effective when it is not directly available to the applicant but depends on the exercise of the discretion of another institution, clarifying, among other things, that the legal remedy of the proposal for request for protection of legality through the State Prosecutor, is not directly accessible to the applicant and it is at the discretion of the State Prosecutor to proceed with filing the request for protection of legality with the Supreme Court, and consequently, the exhaustion of this remedy is not mandatory (see, among others, Court cases KI143/19, with applicant *Agim Thaqi*, Resolution on Inadmissibility, of 16 January 2020; KI234/21, with applicant *N.P.N Çlirimi*, Resolution on Inadmissibility of 8 June 2022; KI111/ 21, with applicant Shaban Murati, Resolution on Inadmissibility, dated April 12, 2023; KI111/22, with applicant *Bechtel Enka GP.O.P*,, Resolution on Inadmissibility, of 25 January 2023; and KI174/20, with the applicant, *DE-KO l.l.c.*, Resolution on Inadmissibility, of 10 February 2021).

1.1.3 Premature referrals

However, if the procedures are ongoing before the regular courts, including the Supreme Court, then the applicant's referral will be considered premature (see, among others, Court cases KI102/16, with the applicant *Shefqet Berisha*, Resolution on Inadmissibility of 14 December 2016, paragraphs 37-39; KI15/16, with applicant *Ramadan Muja*, Resolution on Inadmissibility, of 16 March2016, paragraphs 38-44; KI09/19, with applicant *Leutrim Hajdari*, Resolution on Inadmissibility, of 5 February 2020, paragraphs 40-43; and KI49/22, with applicant *Zejnel Ninaj*, Resolution on Inadmissibility, of 30 August 2023, paragraph 59. In this manner, relying on the principle of subsidiarity, the regular courts are given the opportunity to correct their errors during the regular judicial procedure before the case is referred to the Constitutional Court. On the other hand, the decision by which the Court declares the applicant's referral inadmissible because it is considered premature, does not prevent the latter that in the future, after exhausting effective legal remedies, to submit the individual referral again to the Court.

1.2 OBLIGATION OF EXHAUSTING LEGAL REMEDIES IN THE SUBSTANTIVE ASPECT

The exhaustion of legal remedies, in addition to the obligation to exhaust legal remedies in the formal-procedural aspect, also includes the obligation to exhaust the remedy in the substantive aspect, which means reporting constitutional violations in "*substance/content*" before regular courts so that the latter have the possibility of preventing and correcting the violation of human rights protected by the Constitution and the ECHR. The Court considers legal remedies as exhausted only when the applicants, in accordance with the applicable laws, have used them, in both senses, that is, in the formal-procedural and substantive sense (see, among others, the Court cases, KI71/22, Applicant *Muhamet Mehmeti*, Resolution on Inadmissibility, of 14 November 2023, paragraphs 53-57; KI71/18, with applicants *Kamer Borovci, Mustafa Borovci and Avdulla*

Bajra, cited above, paragraph 57; KI119/17, with applicant *Gentian Rexhepi*, cited above, paragraph 73; KI154/17 and KI05/18, with applicants *Basri Deva, Aferdita Deva and the Limited Liability Company "BARBAS",* cited above, paragraph 94; and KI163/18, with applicant *Kujtim Lleshi*, Resolution on Inadmissibility, of 24 June 2020, paragraph 61).

In such a context, when the allegations of the applicant, neither formally nor in substance/content, have been raised before the regular courts, the Court refers to its case law and that of the ECtHR, as regards the criterion for the exhaustion of legal remedies in the substantive sense, and recalls that in such circumstances, the relevant allegations cannot be examined by the Court due to lack of exhaustion of legal remedies in the substantive sense. Based on the same case law, the Court had rejected to consider the relevant allegations because they had never been raised before regular courts (see, among others, Court cases KI71/22, Applicant *Muhamet Mehmeti*, cited above, paragraphs 56-57; KI119/17, with applicant *Gentian Rexhepi*, cited above, paragraph 71; KI154/17 and KI05/18, with applicants *Basri Deva, Aferdita Deva and Limited Liability Company "BARBAS",* cited above, paragraph 92; KI155/18, with applicant *Benson Buza*, Resolution on Inadmissibility, of 25 September 2019; paragraph 50; KI163/18, with applicant *Kujtim Lleshi*, Resolution on Inadmissibility, of 24 June 2020, paragraph 59; and KI40/20, with applicant *Sadik Gashi*, cited above, paragraphs 66-69).

According to the case law of the Court and the ECtHR, even if the applicant did not mention any specific article of the Constitution from Chapter II [Fundamental Rights and Freedoms], he should have at least raised arguments with a similar or identical effect to regular courts (see, among others, Court case KI40/20, with applicant *Sadik Gashi*, cited above, paragraph 68, and ECtHR cases *Gäfgen v. Germany*, no. 22978/05, Judgment, of 1 June 2010, paras 142, 144 and 146; *Radomilja and Others v. Croatia*, Nos. 37685/10 and 22768/12, Judgment, of 20 March 2018, paragraph 117; and *Karapanagiotou and Others v. Greece*, No. 1571/08, Judgment of 28 October 2010, paragraph 29).

IV. FOUR-MONTH TIME LIMIT

Article 49 (Deadlines) of the Law on Constitutional Court

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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.

Rule 34 (Admissibility Criteria) (1) of the Rules of Procedure
"(1) The Court may consider a referral as admissible 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;...
[...]

1. PURPOSE/MEANING OF FOUR (4) MONTH TIME LIMIT FOR FILING REFERRALS

Based on article 49 (Deadlines) of the Law on the Constitutional Court and subparagraph (c) of paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure, individuals may file alleged constitutional violations with the Constitutional Court within the four (4) month time limit. The purpose of this rule is to promote legal certainty by ensuring that cases raising constitutional issues are dealt with within a reasonable time and that previous decisions are not continually open to challenge (see, *inter alia*, Court cases KI61/23, with applicant, *Hedie Bylykbashi*, Resolution on Inadmissibility, of 25 May 2023, paragraph 33; KI24/23, with applicant, *Sami Nuredini*, Resolution on Inadmissibility, of 27 April 2023, paragraph 21; KI44/22, with applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility, paragraph 48; KI 144/22, with applicant, *SebahateDërvishi*, Resolution on Inadmissibility, of 20 September 2022, paragraph 54; and KI48/21, with applicant, *Xhavit R. Sadrija*, Resolution on Inadmissibility, of 30 June 2021, paragraph 44; and the ECtHR case *Lekić v. Slovenia*, no. 10865/09, 45886/07 and 32431/08, Judgment of 11 December 2018, paragraph 64).

Furthermore, the period of four (4) months, for the submission of the referral by individuals, (i) enables the potential applicant to consider whether he wishes to submit a referral and, if so, to decide on the specific complaints and arguments that should be raised; and at the same time, (ii) facilitates the determination of facts in a case, taking into account that over the time, any fair examination of the issues raised may become difficult. This rule specifies the time limit for the control exercised by the Court and informs individuals and state authorities about the time limit after which such control is no longer possible (see, among others, Court case KI115/20, with applicant *Muharrem Rama*, Resolution on Inadmissibility, of 3 November 2021, paragraphs 55 and 56).

In principle, there are two primary conditions based on which the course of the four (4) month period is calculated, namely, (i) if the contested decision is a "*final decision*"; and (ii) if the latter is the result of the last effective legal remedy (see, among others, Court case KI44/22, cited above, paragraph 40). In the following, the relevant case law for the assessment of these two criteria will be clarified.

1.1 FINAL DECISION

In the context of assessing the "*final decision*", the Court, through its case law, has emphasized, among other things, that "*the deadline begins to be calculated from the final decision, as the result of the exhaustion of adequate and effective remedies to ensure the correction of the case, which is the subject of the complaint*." In the aforementioned context, among other things, the case law of the State and the Court is relevant, regarding (i) the starting point and the end of the expiration of the deadline, including the moment of notification of the party regarding the relevant decision; and (ii) return to the previous situation.

1.1.1 Beginning and end of the four (4) month time limit

Based on the case law of the Court, the period of 4 (four) months begins to run from the date of service of the final decision to the applicant or his legal representative, which is the result of the exhaustion of effective legal remedies in the case that is the subject of the appeal (see, among others, Court case KI59/18, with applicant *Strahinja Spasić*, Resolution on Inadmissibility, of 27 March 2019, paragraphs 50 and 51). Having said that, based on the case law of the ECtHR, the deadline is always calculated based on the concrete circumstances of each case and as a result, the latter is autonomous and applies to the facts of each case individually (see, among others, the case of the Court KI 07/23, with applicant *Musli Morina*, Resolution on Inadmissibility, of 12 April 2023, paragraph 32).

Moreover, the Court, based on the case law of the ECtHR, emphasized that the period of four (4) months begins to run, from the date when the applicant and/or his or her representative was served with the final decision (see, among others, Court case KI45/21, with applicant *Samedin Bytyqi*, Resolution on Inadmissibility, of 20 May 2021, paragraph 32; and KI61/23, with applicant *Hadie Bylykbashi*, Resolution on Inadmissibility, of 25 May 2023 , paragraph 26). This also applies in cases where no legal remedy is available or it is assessed/argued that the relevant legal remedies are not effective and/or adequate (see, among others, Court case KI59/18, with applicant *Strahinja Spasić*, Resolution on Inadmissibility, of 12 March 2019, paragraphs 48-52).

For the purposes of calculating the deadline, the Court, as a rule, assesses the date of notification/service of the applicant and/or his legal representative, with the corresponding final decision. The date of service of the decision by the applicant and/or legal representative can be confirmed by the acknowledgment of receipt submitted to the Court (see, among others, Court case KI143/19, with applicant *Agim Thaqi*, cited above, paragraph 43). In case, when the Applicant has been informed about the decision by his representative, then the period for calculating the deadline starts from the moment when the representative of the applicant is informed about the last decision in the process of exhaustion of legal remedies, despite the fact that the Applicant was notified about the above-mentioned decision at a later stage (see ECtHR case, Çelik v. Turkey, application no. 52991/99, Decision, of 23 September 2004). More specifically, the Court takes as a basis the date when the applicant/legal representative was served with the relevant decision from the court, and not the date when the court decided on the case (see, Court case, KI144/22, with applicant *Sebahate Dervishi*, cited above, paragraph 52).

On the other hand, for the purposes of calculating the four (4) month period, the date of submission of the referral to the Court is taken as the basis. In this case, taken as the basis is (i) the date when the applicant personally submitted the referral to the Court; (ii) the date when the applicant sent the referral by e-mail; or (iii) the date when the applicant submitted his/her referral by mail service (see Court cases KI45/21, cited above, paragraph 6 and 34; and KI218/19, with applicant *Shani Morina*, Resolution on Inadmissibility, of 5 February 2020, paragraph 6, 8 and 37).

> If the attempts to serve the decision of the court on the applicant were not successful and as a result, the decision was displayed on the notice board in the regular court, the date of notification to the applicant is considered the last day when the decision was displayed on the notice board (see, the Court's case KI53/18, with applicant *Hajri Ramadani*, Resolution on Inadmissibility, of 5 November 2018, paragraphs 34-42). Exceptionally, the relevant deadline should be calculated from the moment when the applicant had sufficient knowledge about the final decision of the regular courts (see, Court case, KI 45/21, with applicant *Samedin Bytyqi*, cited above, paragraph 32).

In principle, the four (4) month period for submitting the referral to the Court ends according to the provisions of Rule 29 (Calculation of Time Periods) of the Rules of Procedure, namely (i) "*with the passing of the same calendar day of the month as the day during to which the event or action occurred for which the time period must be calculated*"; while (ii) "*the period ends on a Saturday, Sunday or an official holiday, it will continue until the end of the first working day following it*." (see, among others, Court case, KI185/14, with applicant *Zoran Kolić*, Resolution on Inadmissibility, of 8 July 2015, paragraph 31).

1.1.2 Return to the previous situation

Based on Article 50 (Return to the Previous Situation) of the Law on the Constitutional Court, if the applicant, without his/her fault, was not able to submit the referral within the set deadline, the Court is obliged, based on the request of the applicant, to return it in the previous situation, with the condition that (i) the applicant submits the request for returning to the previous situation within fifteen (15) days from the removal of the obstacle and if one year or more have passed from the day when the prescribed period by law expired; and (ii) justify the request in question.

The Court, exceptionally, has allowed the return to the previous situation of the deadline, in principle, in the circumstances of the Covid-19 pandemic, namely in the case where it had assessed that the applicant, without his fault, was not able to submit the request within the determined deadline, since the necessary documents to be presented by the latter had been stuck at the facility of the Regional Water Company "*Mitrovica",* as a result of the circumstances created by the Covid 19 pandemic (see, cases KI147/20, KI148/20, KI149/20, KI150/20,KI151/20 and KI152/20, Applicants, *Nezir Neziri and 5 others*, Resolution on Inadmissibility, of 20 January 2021, paragraphs 42-47). On the contrary, the Court did not consider the serving of a prison sentence as a reason to exempt the relevant applicant from the obligation to submit the referral within the legal term of 4 (four) months (see the case of the Court KI 123/16, applicant *Vullnet Berisha,* Resolution on Inadmissibility, of 3 July 2017, paragraphs 36 and 40).

1.2 THE LAST EFFECTIVE LEGAL REMEDY REGARDING THE FINAL DECISION

The calculation of time limits for the purpose of submitting the referral to the Court is also directly related to the assessment of the exhaustion of legal remedies. More precisely, for the purposes of calculating the deadlines for submitting referrals, it is relevant to note that the deadline begins to run from the "*final decision*" as a result of an effective legal remedy. In the context of the effectiveness of the legal remedy related to the final decision that can be subject to the assessment of the Court, in principle, the case law of the Court has been clarified in three categories of cases, namely (i) the use of impermissible/ineffective legal remedies based on the applicable laws; (ii) lack of an effective legal remedy; and (iii) situations of a continuous violation.

1.2.1 Impermissible/ineffective remedies

Based on the case law of the ECtHR, the Court has also emphasized that an applicant cannot use legal remedies which, according to the applicable legislation, are not effective, in order to extend the four (4) month deadline to submit a case before the Court, as a result of not submitting the referral pertaining to the *"final court decision"* on time (see, among others, the Court cases KI120/17, with applicant *Hafiz Rizahu,* Resolution on inadmissibility, of 7 December 2017, paragraph 31; KI144/22, with applicant *Sebahate Dervishi,* cited above, paragraph 37; KI234/21, with applicant, *N.P.N "Çlirimi",* Resolution on Inadmissibility, of 8 June 2022, paragraph 36 and KI25/23, with applicant *Shpejtim Ahmeti,* Resolution on inadmissibility, of 25 May 2023, paragraphs 36 -40).

For example, the Court has declared the referrals of the respective applicants inadmissible as out of time, among other things, when (i) a referral was submitted for "*correction of the judgment*" against the Decision of the Appellate Panel of the Special Chamber of the Supreme Court, in the same panel, and which, based on the applicable law, had determined that the relevant legal remedy is impermissible (see, the case KI41/18, with Applicant *Gordana Dončić*, Resolution on Inadmissibility, of 26 September 2018, paragraph 39); (ii) an appeal was submitted to the Court of Appeals, after the decision of the Basic Court to reject the return to the previous situation, when such an appeal was not permissible according to the applicable legislation (see, the case KI35/21*,* with applicant *Sulejman Mushoviq,* Resolution on Inadmissibility, of28 July 2021, paragraphs 61-62*);* and (iii) a request for the protection of legality was submitted against the decision of the Court of Appeals, in the framework of the procedure for the implementation of the criminal sanction, when such an appeal which was not permissible according to the applicable legislation (see, the case KI25/23, with applicant *Shpejtim Ahmeti*, Resolution on Inadmissibility, of 25 May 2023, paragraphs 39-40).

In addition, there are two categories of cases relevant in the context of the connection between the exhaustion of legal remedies and the corresponding spanning of the deadline, namely the cases related to (i) the notification of the State Prosecutor on the proposal for the initiation of request for protection of legality with the Supreme Court; and (ii) the extraordinary remedies, namely of revision in cases where the latter is not allowed, based on the provisions of the applicable law.

In the context of the first case, the Court, in principle, emphasized that the legal remedy of the proposal for filing the request for protection of legality in civil proceedings through the State Prosecutor, is not directly accessible because it is at the discretion of the State Prosecutor to file such a request or not with the Supreme Court. Based on the case law of the ECtHR (see, the case of the ECHR *Lepojić v. Serbia*, no. 13909/05, Judgment of 6 November 2007, and *Trajce Stojanovski v. former Yugoslav Republic of Macedonia*,

no. 1431/03, Judgment of 22 October 2009), the latter declared inadmissible requests as out of time, when they were submitted to the Court after the decision of the State Prosecutor regarding the rejection of the request for protection of legality, clarifying, among other things, that (i) after the issuance of the final decision by the regular courts, nothing had prevented the relevant applicants from submitting a referral to the Court and that (ii) considering that the relevant legal remedy is not directly accessible and is at the discretion of the State Prosecutor, for the purpose of calculating the deadline, the final decision is the corresponding decision of the Court of Appeals (see, similarly, the cases of the Court KI143/19, with applicant *Agim Thaqi*, cited above, paragraphs 40-44; KI234/21, with applicant *N.P.N Çlirimi*, cited above, paragraphs 42-56; KI111/21, with applicant *Bechtel Enka GP. O.P*, cited above, paragraphs 34-45; and KI174/20, with applicant *DE-KO l.l.c,* cited above, paragraphs 32-51).

However, the case law of the Court recognizes also the cases in which the constitutionality of the notifications of the State Prosecutor through which the request of the parties to file the request for protection of legality in their favor was not accepted and the circumstances when such notifications of the State Prosecutor, exceptionally, may be subject to the assessment of the Court have been elaborated (see, the case of the Court KI42/18, with applicant *Asija Muslija*, Resolution on Inadmissibility, of 11 March 2020, through which the applicant's allegations for constitutional violations against the State Prosecutor's Notice were assessed, also supported by the ECtHR case *Gorou v. Greece* (No. 2), application no.12686/03, Judgment of 20 March 2009).

While, in the context of the second issue, the Court has, in principle, emphasized that, in cases when the extraordinary legal remedy of revision in the Supreme Court is not allowed based on the applicable law, the latter cannot be used for the purpose of calculating the four (4) months deadline, and that the final decision should be considered the decision of the relevant court against which the extraordinary legal remedy of revision was filed, and which is challenged before the Court. More specifically, these circumstances, in principle, include cases when the extraordinary legal remedy of revision in the Supreme Court was used, despite the fact that it is not allowed based on articles 212 (untitled) and 228 (untitled) of Law no. 03/L-006 for the Contested Procedure, respectively. For example, (i) when the value of the dispute is significantly below the amount of 3,000 euro according to article 212 (untitled) of the Law on Contested Procedure (see, Court case KI118/20, with applicant *Selim Leka,* Resolution on Inadmissibility, of 21 October 2021, paragraphs 44-48; and/or (ii) despite the fact that the latter was not allowed under article 228 (untitled) of the Law on Contested Procedure (see, the case of the Court KI161/18, with applicant *Ejup Koci*, Resolution on Inadmissibility,of6 June 2019, paragraphs 30-40). However, in cases where the applicants specifically challenge before the Court the Decision of the Supreme Court to reject the revision due to the value of the dispute (*ratione valoris*), the Court will assess their allegations related to the right of access to the court, as an integral part of the right to a fair and impartial trial, guaranteed by article 31 [Right to Fair and Impartial Trial] of the Constitution (see Court cases, KI96/22, with applicant *Naser and Uliks Husaj*, Resolution on Inadmissibility, of 29 August 2023, paragraph 45).

1.2.2 Lack of effective legal remedy available to the party

In cases where it is clear from the start that the applicant does not have an effective legal remedy, the ECtHR has emphasized that the four (4) month deadline starts to run from the date (i) when the disputed action/act took place or was issued; (ii) upon acceptance of such decision; or (iii) when the applicant is notified of the effects of the disputed action/act which directly affected his/her rights (see, ECHR cases, *Dennis and Othersv. the United Kingdom*, application no. 76573/01, Admissibility decision, of 2 July 2002; *Varanva and Others v. Turkey,* no. 16064/90 and 9 others, Judgment, of 18 September 2009, paragraph 157; *Aydarov and Others v. Bulgaria*, application no. 33586/15, Decision of 2 October 2018, paragraph 90; and see case of the Court KI129/21, with applicant *Velerda Sopi,* cited above, paragraphs 124-128).

Such circumstances constitute an exception. However, the Court has already consolidated its case law in this context regarding the right to life guaranteed under Article 25 [Right to Life] of the Constitution. For example, the Court in the case KI41/12 found the violation of the right to life through the failure to act of the Municipal Court, since this court on 26 April 2010 accepted the request from the deceased for the issuance of an emergency protection order and that the latter did not receive any decision regarding this request. In such circumstances, the Court did not apply the criteria of the four (4) month deadline and the exhaustion of legal remedies, given the special circumstances of the case, and found that the parties had no legal remedies available to protect their rights (see Court case KI41/12, cited above, paragraphs 41-53). Similarly, in the case KI129/21, and which is also related to the claim for violation of the right to life and the finding that the applicant did not have available remedies to exhaust, based on the case law of the ECtHR (see, among others, the ECHR case *Opuz v. Turkey*, application no. 33401/02, Judgment of 9 June 2009, paragraphs 110-112), the Court took as a basis the moment when the murder of the deceased, the applicant's mother, took place and the date of submission of the referral to the Court, and found that the referral was submitted within the four (4) month deadline (see, case KI129/22, cited above, paragraphs 122-128).

1.2.3 Situation of continuous violations

In the circumstances, when the alleged constitutional violation is continuous, the Court emphasized that the time period is calculated starting only after the the alleged constitutional violation is committed. Examples of ongoing situations based on the Court's case law include, referrals related to claims for (i) prolongation of procedures before regular courts; and/or (ii) non-execution of decisions of public authorities. In the context of the first category of cases, among others, the case law of the Court, in these cases, is relevant(i) KI03/22, with applicant *EPS Trgovina* (Resolution on Inadmissibility, of 29 September 2022, paragraph 45); and(ii) KI183/21, with applicant *Ejup Koci* (Resolution on Inadmissibility, of 30 March 2022, paragraph 64). While, in the context of the second category of cases, among others, the case law of the Court is relevant, in the cases (i) KI40/09, with applicant *Imer Ibrahimi and 48 other former workers of the Energy Corporation of Kosovo, (*Judgment of 23 June 2010, paragraphs 40 and 41); (ii) KI 53/11, KI 25/12, KI 100/12 and KI 49/13, with applicant*Isa Grajqevci, Fehmi Ajvazi, Musli Nuhiu and Ramadan Imeri,* (Judgment of 14 October 2013, paragraph38*);*(iii) KI 132/10, KI 28/11, KI 82/11, KI 85/11, KI 89/11, KI 100/11, KI 104/11, KI 109/11, KI 118/11, KI 123/11, KI 142/11, KI 143/11, KI 144/11, KI 154/11, KI 01/12, KI 02/12, KI 14/12, with applicants *Istref Halili and 16 other former workers of the Kosovo Energy Corporation, (*Judgment of 26 September 2012, paragraph 34); (iv) KI 138/11, with applicant *Nazife Xhafolli, (*Judgment of 4 February 2014, paragraph 40); (v) KI90/16, with applicant *Branislav Jokić (*Judgment of 5 December 2017, paragraphs 32-35); and (vi) KI 65/15, with applicants *Tatjana Davila, Ljubića Maric, Zorica Krsenković*, *Zlatoj Jevtić* (Judgment of 14 September 2016, paragraph 78).

Finally, the case law of the ECtHR also establishes special situations for the application of the four (4) month deadline, including the conditions of (i) violation of the right to life; (ii) the lack of an effective investigation in case of death and ill-treatments; and (iii) conditions of detention. While the Court has no relevant practice related to the last two categories as above, the principles and conditions for the calculation of the deadline in such circumstances may be subject to exceptions, are defined in the relevant practice of the ECtHR, which includes but it is not limited to the cases (i) *Melnichuk and Others v. Romania* (no.35279/10 and 34782/10, Judgment of 5 May 2015, paragraph 87-89); (ii) *Sakvarelidze v. Georgia*, no. 40394/10, Judgment of 6 February 2020, paragraphs41-46); (iii) *Velev v. Bulgaria*, no. 43531/08, Judgment of 16 April 2013, paragraphs 40, 59 and 60); (iv) *Mocanu and Others v. Romania*, cited above, paragraphs 265 and 273-275); (v) *Ananyev and others v. Russia*, *no.* 42525/07 and 60800/08, Judgment of 10 January 2012, paragraphs 75-78); (vi) *Shishanovv. Republic of Moldova*, no. 11353/06, Judgment of 15 September 2015, paragraphs 68-69); and (vii) *Gough v. the United Kingdom*, no. 49327/11, Judgment of 28 October 2014, paragraphs 133-134).

V. NON-SPECIFICATION OF FUNDAMENTAL RIGHTS AND FREEDOMS BY THE APPLICANT

Article 48 (Accuracy of the Referral) of the Law on the Constitutional Court

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.

Rule 34 (Admissibility Criteria) (1) (d) of the Rules of Procedure

"(1) The Court may consider a referral as admissible if:
[...]
(d) The referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.

Article 48 (Accuracy of the Referral) of the Law on the Constitutional Court contains a total of two requirements. The first consists in (i) the duty of the applicants and their obligation to accurately clarify what rights and freedoms they claim to have been violated by the public authority whose decision they challenge; and, the second consists in (ii) the duty of the applicants and their obligation to specify the concrete act of the public authority that they wish to challenge before the Constitutional Court. Both of these criteria of article 48 (Accuracy of the Referral) of the Law on the Constitutional Court, and especially the first criterion of this article, is also reflected in subparagraph (d) of paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure where it is required that a referral submitted to the Court must accurately clarify and adequately present the facts and claims for violation of constitutional rights or provisions (see, among others, the Court's cases, KI91/17, with applicant *Enver Islami*, Resolution on Inadmissibility, of 22 November 2018, paragraph 31; KI206/19, with applicant *Mladen Nikolić*, Resolution on Inadmissibility, of 26 February 2020; paragraphs 33-36; KI97/20, with applicant Nehat Salihu, Decision on Inadmissibility, March 26, 2021; KI73/21, with applicant *Minire Krasniqi-Zhitia*, Resolution on Inadmissibility, of 29 July 2021, paragraph 39; and KI134/23, with applicant *Feride Berisha*, Resolution on Inadmissibility, of 17 January 2024, paragraphs 32-33).

Regarding these admissibility criteria stipulated by the Law on the Constitutional Court and further specified in the Rules of Procedure, the Court emphasizes that despite the fact that the applicants have clearly specified the act of the public authority they are challenging, if they do not fulfill their obligation to "*accurately clarify what rights and freedoms he/she claims to have been violated*" by the public authority, the relevant referral will be declared inadmissible as provided by article 48 (Accuracy of the Referral) of the Law on the Constitutional Court in conjunction with subparagraph (d) of paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure.

VI. INADMISSIBILITY OF REFERRAL BASED ON MERITS - MANIFESTLY ILL-FOUNDED REFERRALS

Rule 34 (Admissibility Criteria) (1) (d) of the Rules of Procedure

"(1) The Court may consider a referral as admissible if:
[...]
(d) The referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.

(2) The Court may consider a referral as inadmissible if the referral is intrinsically unreliable when the applicant has not sufficiently proved and substantiated his/her allegations."

1. PURPOSE/MEANING OF DECLARING REFERRALS INADMISSIBLE AS MANIFESTLY ILL-FOUNDED ON CONSTITUTIONAL BASIS

The aforementioned rule, based on the case law of the ECtHR and the Court, enables the latter to declare inadmissible referrals for reasons relating to the merits of a case. More precisely, based on this rule, the Court can declare a referral inadmissible, after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis (see, among others, cases KI26/23, with applicant *Kastrioti Petrol*, Resolution on Inadmissibility, of 7 November 2023, paragraph 46; KI96/22, with applicants *Naser Husaj and Uliks Husaj*, Resolution on Inadmissibility, of 29 August 2023, paragraph 52; KI216/21, with applicant *Kujtim Rezniqi*, Resolution on Inadmissibility, of 31 March 2022, paragraph 45; KI203/21 and KI205/21, with applicants *Nexhmije and Sahit Kabashi*, Resolution on Inadmissibility, of 9 March 2022, paragraph 73; KI175/20, with applicant Privatization Agency of Kosovo, Resolution on Inadmissibility of 26 March 2021, paragraph 37).

Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as "*manifestly ill-founded*" in its entirety or only with respect to any specific claim that a referral may contain. In this respect, it is more accurate to refer to the latter as "*manifestly ill-founded claims*". The manifestly ill-founded claims can be categorized into four separate groups: (i) claims that qualify as claims of "*fourth instance*"; (ii) claims that are categorized with "*clear or apparent absence of a violation*"; (iii) "*unsubstantiated or unsupported*" claims; and finally, (iv) "*confused or far-fetched*" claims.

This concept of inadmissibility on the basis of a referral assessed as "*manifestly ill-founded*", and the specifics of the four above-mentioned categories of claims qualified as "*manifestly ill-founded*", the Court has developed based on the case law of the ECtHR, including but not limited to cases (i) KI40/20, with applicant

Sadik Gashi, cited above, of 20 January 2021; (ii) KI163/18, with applicant *Kujtim Lleshi*, Resolution on Inadmissibility, of 24 June 2020; (iii) KI21/21, with the applicant, *Asllan Meka*, Resolution on Inadmissibility, of 28 April 2021; and (iv) KI107/21, with applicant *Ramiz Hoti*, Resolution on Inadmissibility, of 21 October 2021.

1.1 ALLEGATIONS OF "*FOURTH INSTANCE*"

The Court, while examining the referrals submitted before it and after exhausting the legal remedies provided by law, assesses the constitutionality of the acts of public authorities. More precisely, the scope of control of the Court is limited only to the control of the contested act in the context of compliance with the fundamental rights and freedoms guaranteed by the Constitution, respecting the discretion and competence of the regular courts to assess the legality of the contested acts before the Court. Otherwise, the Court would act as a "*fourth instance*" court, in violation of constitutional jurisdiction limits and would violate the jurisdiction of regular courts, as stipulated by the Constitution. Therefore, the Court does not deal with factual or legal errors made by regular courts, unless such errors have resulted in violation of fundamental human rights and freedoms guaranteed by Chapter II [Fundamental Rights and Freedoms] of the Constitution.

The case law of the Court is very consolidated in this context. If the applicants before the Court simply raise claims related to the manner of interpretation and/or application of applicable law by regular courts and/or assessment of evidence, and do not present any argument related to claims of violation of rights and fundamental freedoms guaranteed by the Constitution, the Court, in accordance with the doctrine of the "*fourth instance*" and the principle of subsidiarity, will declare as inadmissible referrals based on the examination of the relevant merits (see, in this context and among others, the cases of the Court KI179/18, with applicant *Belgjyzar Latifi*, Resolution on Inadmissibility, of 24 June 2020, paragraphs 68-84; KI49/19, with applicant *Limak Kosovo International Airport J.S.C., "Adem Jashari"*,Resolution on Inadmissibility, of 10 September 2019, paragraph 47; KI154/17 and KI05/18, with applicants *Basri Deva, Afërdita Deva and the limited liability company "Barbas"*, cited above, paragraph 60; KI76/21, with applicant *Qemajl Babuni*, Resolution, of 10 November 2021, paragraph 34; KI188/21, with applicants *Zenel and Isuf Plashniku*, Resolution on Inadmissibility, of 19 July 2022, paragraphs 98-99; and KI31/22, with applicant *Fidan Hoti*, Resolution on Inadmissibility, of 18 January , 2023, paragraphs 43-44).

> In light of the above, the Court, in principle, cannot question the findings and conclusions of the regular courts that are related to: (i) the determination of factual situation of the case; (ii) the interpretation and application of the applicable law by the regular courts; (iii) admissibility and assessment of evidence during the procedure; (iv) if the final determination in a civil dispute was fair; and/or (v) the guilt or innocence of the accused in criminal proceedings.

However, the Court, based on the case law of the ECtHR, can exceptionally examine the issues related to the legal interpretations or the determination of factual situation, if based on the claims of the relevant applicant as well as the specific circumstances of the concrete case, it results that the findings of the public authorities /regular courts, have resulted in "*manifestly erroneous and/or arbitrary conclusions*" for the applicant, which in itself would result in a violation of the fundamental rights and freedoms guaranteed by the Constitution (see Court cases KI75/17, with applicant *X*, Resolution on Inadmissibility, of 6 December 2017, paragraph 59; KI122/16 with applicant *Riza Dembogaj*, Judgment, of 30 May 2018, paragraph 79; and

KI193/22, with applicant *Avni Selmani*, Resolution on Inadmissibility, of 30 August 2023, paragraph 62; and ECtHR cases *Sisojeva and Others v. Latvia* [GC], No. 60654/00, Judgment of 15 January 2007; *De Tommaso v. Italy* [GC], no. 43395/09, Judgment, of 23 February 2017, paragraph 170; and *Kononov v. Latvia* [GC], no. 36376/04 Judgment, of 17 May 2010, paragraph 189).

1.2 CLEAR OR APPARENT ABSENCE OF VIOLATION

The clear and/or apparent absence of violation, based on the case law of the ECtHR, is one of the grounds on which a referral may be declared inadmissible as manifestly ill-founded on constitutional basis. In such cases, the Court, based on its case law, examines the claims of the applicant on the "*merits*", and through the Resolution on Inadmissibility, finds that the latter are inadmissible as manifestly ill-founded on constitutional basis on the grounds of "*clear or apparent absence of violation*".

According to the case law of the ECtHR, such a conclusion can be reached in cases where (i) it is assessed that the procedures related to the decision-making of the courts were, in their entirety fair and not arbitrary; (ii) it is assessed that there is no appearance of a lack of proportionality between the purpose and the means employed (see, the case of the ECtHR *Mentzen v. Latvia*, no. 71074/01, Admissibility Decision of 7 December 2004); (iii) it is assessed that there is an apparent absence of violation of the contested article of the ECHR, which the applicant invokes, because there is sufficient case law of the ECtHR in identical or similar cases, on the basis of which it can be concluded that there has been no violation (see the ECtHR case *Galev and Others v. Bulgaria*, no. 18324/04, Admissibility Decision of 29 September 2009); or (iv) although there is no similar or identical case law, such a conclusion can be reached on the basis of existing ECtHR case law (see, ECtHR case *Hartung v. France*, no. 10232/07, Admissibility Decision of 3 November 2009).

Applying the aforementioned principles stemming from the case law of the ECtHR, the Court has applied such an approach, among other things, in relation to the claims of the applicants for (i) arbitrary interpretation and application of the law by the regular courts (see, case KI111/21 with applicant *Shaban Murati*, Resolution on Inadmissibility, of 12 April 2023, paragraphs 80-81); (ii) lack of a reasoned court decision (see, among others, cases KI40/20 with applicant *Sadik Gashi*, Resolution on Inadmissibility, of 20 January 2021, paragraphs 61-62; KI188/21, with applicants *Zenel and Isuf Plashniku*, Resolution on Inadmissibility, cited above, paragraphs 89-90; and KI208/23, with applicant *Kosovo Telecom J.S.C.,* Resolution on Inadmissibility, of 31 January 2024, paragraphs 57-66); (iii) for prolongation of the court procedure (see case KI183/21, with applicant *Ejup Koci*, Resolution on Inadmissibility, of 30 March 2022, paragraphs 114-115); (iv) equality of arms (see, case KI89/22, with applicant *Xhelal Plakolli*, Resolution on Inadmissibility, of 7 March 2023, paragraphs 57-69) and (iv) divergence in the case law of regular courts (see, among others, case KI57/23, with applicant *Ismet Ferati*, Resolution on Inadmissibility, of 30 August 2023, paragraphs 42-55).

1.3 "*UNSUBSTANTIATED AND UNSUPPORTED*" CLAIMS

As explained above, based on Article 48 (Accuracy of the Referral) of the Law on the Constitutional Court, the applicant has the duty to accurately clarify in his referral what rights and freedoms he claims to have been violated and which is the concrete act of the public authority which the applicant wishes to challenge. Furthermore, based on subparagraph (d) of paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure, a referral submitted to the Court must accurately and adequately state the facts and allegations of violation of rights or constitutional provisions. If this is not the case, the Court declares a referral inadmissible as manifestly ill-founded on constitutional basis, because the claims of the applicant are "*unsubstantiated and unsupported*" (see Court cases KI160/20, with applicant, *Municipality of Gjilani*,

Resolution on Inadmissibility of 11 May 2022, paragraph 121; KI08/21, with applicant *Mirishahe Shala*, Resolution on Inadmissibility, of 2 June 2021, paragraphs 61-62; and KI70/21, with applicant *Burhan Tusha*, Resolution on Inadmissibility, of 2 June 2021, paragraphs 59-60).

Most of the cases before the Court that were declared inadmissible on the above-mentioned basis, reflect cases in which, in the referral submitted to the Court, the applicant merely mentioned or cited an article of the Constitution, without explaining how the same was violated in his case (see, among others, Court cases KI126/22, with applicant *Gëzim Bajrami*, Resolution on Inadmissibility, of 25 January 2023, paragraphs 86-87; KI119/21, with applicant *Ahmet Hoti and others*, Resolution on Inadmissibility, of 22 June 2022, paragraph 94; KI163/18, with applicant *Kujtim Lleshi*, cited above, paragraphs 86-87; KI02/18, with applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*,Resolution on Inadmissibility, of 20 June 2019, paragraph 36; KI124/20 with applicant *Muhamed Ali Ceysűlmedine*, Resolution on Inadmissibility, of 20 January 2021, paragraph 42; and KI95/19, with applicant *Ruzhdi Bejta*, Resolution on Inadmissibility, of 8 October 2019, paragraphs 30-31; see also the cases of *Trofimchuk v. Ukraine*, no. 4241/03, Partial Admissibility Decision of 31 May 2005; *Baillard v. France*, no. 6032/04, Admissibility Decision of 25 September 2008).

1.4 "*CONFUSING OR FAR-FETCHED*" CLAIMS

The last category, which refers to cases where the Court may declare the referral as manifestly ill-founded, also includes cases where the claims presented to the Court are so "*confusing or far-fetched*" that it is objectively impossible for the Court to give meaning to the facts explained by the applicant and the claims filed before it. The latter, based on the case law of the ECtHR, also applies to the claims, which are related to facts "*which are objectively impossible, clearly fabricated or in open contradiction to common sense*".

VII. GROUNDS OF INADMISSIBILITY RELATING TO THE COURT'S JURISDICTION

1. INADMISSIBILITY RATIONE MATERIAE

Rule 34 (Admissibility Criteria) (3) (b) of the Rules of Procedure

[...]
(3) The Court may also consider a referral inadmissible if any of the following conditions are met:
[...]
(b) The Referral is incompatible ratione materiae with the Constitution;
[...]

1.1 PURPOSE/MEANING OF *RATIONE MATERIAE* INCOMPATIBILITY WITH THE CONSTITUTION

The *ratione materiae* compatibility of the referral with the Constitution stems from the material jurisdiction of the Court. This means that in order for a referral to be declared as *ratione materiae* in accordance with the Constitution, the individual right or freedom referred to by the applicant, namely the right that he claims to have been violated must be an individual right and freedom guaranteed by the Constitution. Moreover, the compatibility *ratione materiae* of a referral is related to the scope of specific articles of the Constitution or of international instruments directly applicable in the Republic of Kosovo based on article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution and consequently, the claim raised by the applicant must come within the scope of the concrete right guaranteed by the Constitution, so that the same is considered *ratione materiae* compatible with the Constitution.

The Court, through its case law, has emphasized that *ratione materiae* compatibility must be examined during each stage of review of an individual referral (see Court case KI63/15, with applicant *Bedri Haxhi Halili*, Resolution on Inadmissibility, of 18 December 2015, paragraph 16; and KI138/14, with applicant *Majda Fazli-Neziri*, Resolution on Inadmissibility, of 8 December 2014, paragraph 15). When considering compatibility *ratione materiae* with the Constitution, the Court, in principle, assesses whether (i) the individual right or freedom that the applicant claims to have been violated is guaranteed by any of the provisions of the Constitution or the listed international instruments in article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution; and (ii) the issue raised by the applicant in the context of an individual right, falls within the scope of that right or freedom guaranteed by the Constitution.

More precisely, related to the first issue, namely the individual right or freedom that the applicant claims to have been violated, the Court, through its case law, has established that the referral is not *ratione materiae* compatible with the Constitution, regarding (i) the request for exceptional mitigation of the sentence,

since in that procedure it is not decided regarding the corresponding criminal charge in the context of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR (see Court case KI06/18, with applicant *Shkumbin Mehmeti*, Resolution on Inadmissibility, of 16 January 2019, paragraph 53); (ii) the referral for the interpretation of the statute of a political entity (see, Court case KI115/12, with applicant *Fadil Salihu*, Resolution on Inadmissibility, of 25 January 2013, paragraphs 18-19); (iii) the referral for giving an opinion regarding the possibility of employment with the acquired academic master's title (see Court case KI138/14, with applicant *Majda Fazli-Neziri*, Resolution on Inadmissibility of 8 December 2014, paragraphs 13-16); (iv) the referral for legal interpretation of the Law on Public Procurement (see Court case KI15/15, with applicant *Hysni Hoxha*, Resolution on Inadmissibility, of 7 July 2015, paragraph 24); and (v) the request for the assessment of the decisions of the regular courts related to disputes from the labor relationship with religious confessions, namely the Islamic Community of Kosovo, in the framework of which, the Court clarified the circumstances when the guarantees of article 31 [Right to Trial Fair and Impartial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, are applicable in case of disputes related to religious confessions (see, Court case KI133/17, with applicants *Ali Gashi*, Resolution on Inadmissibility, of 29 July 2019, paragraphs 53-71). Furthermore, and apart from the fact that the right alleged to have been violated must be protected by the Constitution, in order for a referral to be declared *ratione materiae* compatible with the Constitution, it must also fall within the jurisdiction of the Court. The Court assessed a referral as incompatible *ratione materiae* with the Constitution due to the fact that it was not within its jurisdiction to assess the compatibility of laws with international agreements (see, Court case KI168/14, with applicants *Mabco Constructions and Eurokoha-Reisen*, Resolution on Inadmissibility, of 28 August 2015, paragraph 57).

Whereas, related to the second issue, namely whether the allegation of violation of an individual right or freedom falls within the scope of an individual right or freedom, the case law of the Court can be categorized into the following three groups, namely if (i) court decisions on the rejection of referrals for review or repetition of the procedure; (ii) court decisions rendered within the framework of the "*preliminary proceedings*", namely the proceedings related to the measure of insurance in civil procedure or the request for suspension of the administrative decision in administrative procedure; and (iii) court decisions related to the criminal charge brought against the third person, have resulted in the violation of the right to a fair and impartial trial guaranteed by article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR. Each of these categories is elaborated in what follows.

1.1.1 Review and repetition of the proceedings

In the context of the constitutional review of court decisions related to the review or repetition of the court proceedings, the Court through its case law, and based on the case law of the ECtHR, concluded that article 31 [Right to Fair Trial and Impartial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, do not apply in the proceedings, through which the review or repetition of the proceedings is requested, both in civil and criminal ones. As a result, the Court has declared, in principle, as *ratione materiae* incompatible with the Constitution, the referrals for the assessment of court decisions for the rejection of the request for the review or repetition of the proceedings.

In the context of criminal proceedings, based on the case law of the ECtHR, the Court clarified that, in principle, a person whose sentence has become final and who files a request for the review of the relevant case, (i) is no further "*accused of a criminal offense*" within the meaning of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR; and (ii) in the proceedings according to the request for review of the criminal proceedings, the regular courts decide

only if the request for review of the criminal proceedings meets the procedural criteria for its approval and not for "*any indictment*" of the applicant, in the context of the scope of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR (see, among others, Court cases KI07/17, with applicant *Pashk Mirashi*, Resolution on Inadmissibility, of 29 May 2017, paragraph 66; KI06/18, with applicant *Shkumbin Mehmeti*, Resolution on Inadmissibility, of 16 January 2019, paragraph 55; KI50/18, with applicant *Deljalj Kazagić*, Resolution on Inadmissibility, of 16 January 2019, paragraph 51; KI76/18, with applicant *Pjetër Boçi*, Resolution on Inadmissibility, of 22 November 2018, paragraph 69; and KI34/23, with applicant *Veton Syla*, Resolution on Inadmissibility, of 29 August 2023, paragraphs 48 and 49).

While, in the context of the civil proceedings, based on the case law of the ECtHR, the Court clarified that, in principle, the Constitution does not guarantee the right to repeat the proceedings, as long and insofar that during this proceedings, the regular courts do not decide regarding the "*civil rights*" of the respective applicant, taking into account that the latter, respectively "*civil rights*" have already been decided by a final decision (see Court cases KI80/15, KI81/15 and KI82/15 , with applicant *Rrahim Hoxha*, Resolution on Inadmissibility, of 6 December 2016, paragraph 33; and KI63/21, with applicant *Hysen Metahysa*, Resolution on Inadmissibility, of 7 October 2021, paragraphs 76). Having said that, in cases where the regular courts have decided to approve the review and repetition of the proceedings, both in criminal and civil cases, when the same were concluded with a final decision, the guarantees of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, start to apply.

Considering that the case law of the Court is not yet consolidated in the context of the exceptions, namely the applicability of the guarantees of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR with respect to the procedure for the review or repetition of the proceedings, some examples of the cases of the ECtHR in this respect, include the following: (i) within the framework of the decisions rendered in relation to the request for the reopening of criminal proceedings, the guarantees of article 6 (Right to due process) of the ECHR apply when the extraordinary legal remedy for reopening the proceedings include the obligation of the courts to decide on the criminal charge (see, the case of the ECtHR *Moreira Ferreira v. Portugal* (No. 2), No. 19867/12, Judgment, of 11 July 2017, paragraph 65); and (ii) within the framework of civil procedure, the scope and specific features of an extraordinary complaint in a specific legal system may be of such a nature that the procedure followed may fall within the scope of article 6 (Right to a fair trial) of the ECHR and the guarantees of a fair process offered to litigants (see ECtHR case *Bochan v. Ukraine* (no. 2), no. 22251/08, Judgment, of 5 February 2015, paragraph 50).

1.1.2 Preliminary proceedings

Moreover, in principle, the decisions rendered in the preliminary proceedings within the framework of interim or security measures, in a civil dispute, are *ratione materiae* incompatible with the Constitution, except in cases where the interim and/or security measure itself, is related to "*the civil law in question*". As a consequence and within the framework of the assessment of the court decisions issued in the preliminary proceedings, namely in terms of requests for the imposition of an interim/security measure or the suspension of the execution of the administrative decision, the Court, based on the case law of the ECtHR, before assessing the claims raised by the respective applicant for violation of his/her right to a fair and impartial trial, first assesses whether article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, are applicable in the circumstances of the relevant case.

This is due to the fact that according to the case law of the ECtHR, not all interim and/or security measures determine "*civil rights and obligations*". In this context, and based on the case law of the ECtHR, the case law of the Court has determined the principles that must be taken into account if the relevant preliminary proceedings determine "*civil rights and obligations*", namely if (i) the right in question is "*civil*" within the meaning of the ECHR both in the court review and in the proceedings related to the security measure, within the autonomous meaning of this notion according to article 6 (Right to a fair trial) of the ECHR; and (ii) these proceedings effectively determines the relevant "*civil*" *right*. Whenever an interim and/or security measure can be considered effective to determine the "*civil right or obligation in question*" the guarantees of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with srticle 6 (Right to a fair trial) of the ECHR, are applicable. Based also on the ECtHR case, *Micallef v. Malta* (no. 17056/06, Judgment of 15 October 2009, paragraphs 84 and 85 and the references mentioned therein), the Court already has consolidated case law, among others including (i) in civil proceedings, the Court cases KI 122/17, with applicant *Česká Exportni Banka A.S.*, Judgment of 18 April 2018, paragraphs 125-135; KI150/16 with applicant *Mark Frrok Gjokaj*, Judgment of 19 December 2018, paragraphs 62-72; KI81/19, with applicant *Skënder Podrimqaku*, Resolution on Inadmissibility, of 9 November 2019, paragraphs 38-51; and KI107/19, with the applicant *Gafurr Bytyqi*, Resolution on Inadmissibility, of 11 March 2020, paragraphs 48-59; while (ii) in the administrative procedure, the Court cases KI195/20, with applicant *Aigars Kesengfelds*, Judgment, of 29 March 2021, paragraphs 73-85, KI202/21, with applicant *Kelkos Energy L.L.C.*, Judgment, of 29 September 2022, paragraphs 91-101; and KI143/22, with the applicant *Hidroenergji L.L.C*, Judgment, of 15 December 2022, paragraphs 98-108.

1.1.3 Criminal charge filed against the third person

In relation to the referrals through which the applicant claims a violation of his/her fundamental rights and freedoms as a result of the criminal charge which was not filed against him/her, but against a third person, the Court, based on the case law of the ECtHR, has concluded that such referrals do not fall within the scope of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR, because such circumstances are not related to "*any criminal charge that is filed against her/him*" according to the definition of the Constitution, unless such proceedings also decide in relation to their civil rights, including the property-legal claim. Moreover, and in the aforementioned context, the Court has emphasized that the Constitution and the ECHR, among other things, "*do not ensure the right to prosecute or punish a third party for a criminal offense*." (see, *inter alia*, Court cases KI52/18, with applicant *Zoran Stanišić*, Resolution on Inadmissibility, of 16 January 2019, paragraphs 48-53; KI15/21, with applicant *Bersim Sulja*, Resolution on Inadmissibility, of 28 July 2021, paragraphs 56-57; KI90/18, with applicants *Nedvedete Ponosheci and Atdhe Ponosheci*, Resolution on Inadmissibility, of 15 January 2020, paragraph 57; KI174/18, with applicant *Bedri Gashi*, Resolution on Inadmissibility, of 10 April 2019, paragraph 31; and KI77/20, with applicant *Kujtim Zarari*, Resolution on Inadmissibility, of 11 November 2020, paragraphs 43-46).

Finally and in the context of incompatibility *ratione materie* with the Constitution, based on the case law of the ECtHR, the Court is not obliged to examine claims for other fundamental rights and freedoms guaranteed by various international instruments and which are not directly applicable in the legal system of the Republic of Kosovo. However, according to the aforementioned case law, in those cases when the relevant right or freedom can be defined in the sense of the terms or notions of the Constitution and/or the ECHR, "*it can and should be based on the elements of international law, other than those of the Convention, the interpretation of such elements by competent bodies, and the practice of European states that reflect their common values*" (see, the case of the ECtHR, *Demir and Baykara v. Turkey*, no. 34503/97, Judgment of 12 November 2018, paragraph 85).

2. INCOMPATIBILITY RATIONE PERSONAE

Rule34 (Admissibility Criteria) (3) (c) of the Rules of Procedure

[...]
(3) The Court may also consider a referral inadmissible if any of the following conditions are met:
[...]
(c) The Referral is incompatible ratione personae with the Constitution;
[...]

2.1 PURPOSE/MEANING OF INCOMPATIBIITY *RATIONE PERSONAE* WITH THE CONSTITUTION

The compatibility *ratione personae* of the referral with the Constitution, in principle, means that the alleged constitutional violations must have been committed by a public authority of the Republic of Kosovo (see Court case KI63/09, with applicant *Bajram Santuri*, Resolution on Inadmissibility, of 6 July 2011, paragraphs 49-50). According to the case law of the ECtHR, the compatibility *ratione personae* of the referral must be dealt with *ex officio* by the Court (see, ECtHR case *Sejdić and Finci v. Bosnia and Herzegovina*, no. 27996/06 and 34836/06, Judgment of 22 December 2009, paragraph 27). Thus, during the assessment of each referral, the Court will first assess whether the alleged constitutional violations were committed by a public authority or not.

Within the meaning of the case law of the ECtHR, the extent of the jurisdiction of the public authorities of the Republic of Kosovo is assumed to be in the entire territory of the Republic of Kosovo. The scope of this jurisdiction also includes the decisions taken at the border of the state territory (see the ECtHR case *M.A. and Others v. Lithuania*, no. 59793/17, Judgment of 11 December 2018, paragraphs 69-72). However, the lack of territorial jurisdiction, namely *ratione loci*, does not automatically release the Court from the obligation to assess the existence of jurisdiction *ratione personae* (see the ECtHR case *Drozd and Janousek v. France and Spain*, no. 12747/87, Judgment of 26 June 1992, paras 84-90). This is because in exceptional circumstances, within the meaning of the case law of the ECtHR, the public authorities of the Republic of Kosovo can be held responsible for alleged violations through decisions that produce effects outside the territory of the Republic of Kosovo (see, cases of the ECtHR *Drozd and Janousek v. France and Spain*, cited above, paragraph 91; and *Loizidou v. Turkey*, no. 15318/89, Judgment of 23 March 1995, paragraphs 59-64). Known cases of the extraterritorial exercise of state jurisdiction include the exercise of authority by diplomats and consuls over their own nationals and their property. In such cases, despite the fact that the alleged violations occurred outside the territory of the state, the jurisdiction that the state has exercised through the authority of the respective diplomats and consuls, attracts their responsibility and consequently, an individual request would be considered *ratione personae* in accordance with the Constitution, despite that the alleged violation took place outside the territory of the state (see the ECtHR case *M.N. and Others v. Belgium*, no. 3599/18, Judgment of 5 March 2020, paragraph 106).

The case law of the ECtHR also, among other things, specifies (i) the condition of the relevant authority's competence to exercise jurisdiction; (ii) the relevant authority of public enterprises; (iii) the responsibility of the public authority in case of actions of private individuals; and (iv) the authority of international organizations. More precisely, according to the case law of the ECtHR, in the context of the first case, the exercise of jurisdiction by a public authority is a necessary condition for public authorities to be held responsible for their actions or inactions in relation to allegations of violation of human rights (see the ECtHR case *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, Judgment of 8 July 2004, paragraph 311). Thus, in addition to the attribute of "*public authority*" of the alleged violator of human rights, jurisdiction *ratione personae* requires that it be determined whether or not a public authority had jurisdiction in the concrete case. In the context of the second issue, in addition to public authorities, also the alleged violations of a public enterprise, which functions as a legal entity in itself, can be considered *ratione personae* compatible with the Constitution, insofar as these enterprises lack sufficient institutional and operational independence to exempt the state from responsibility (see ECtHR cases *Mykhaylenky and Others v. Ukraine*, no. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953 /02, 36800/02, 38296/02, and 42814/02), Judgment of 30 November 2004, paragraphs 43-46; and *Tokel v. Turkey*, no. 23662/08, Judgment of 9 February 2021, paragraphs 58-63). In the case of the Republic of Kosovo, such are the public enterprises, which, despite their independent legal subjectivity, are the property of the Government of the Republic of Kosovo, where the governing bodies of these enterprises are elected by the public authorities (see, among others, Law no. 03 /L-087 on Public Enterprises, supplemented and amended by Laws no. 04/L-111 and no. 05/L-009). In the context of the third issue, namely related to the actions of private individuals, public authorities can only be held responsible if they have accepted or approved their actions (see the ECtHR case *Ilaşcu and Others v. Moldova and Russia*, cited above, paragraph 318). Whereas, in the context of the fourth issue, an alleged violation of human rights arising from a decision of an international organization cannot be attributed to public authorities, even if the relevant state is a member of that organization. Exceptions to this are cases when the organization in which the relevant state is a member to, does not offer protection of human rights and fundamental freedoms generally equivalent to those offered in the ECHR (see the ECtHR case *Roland Klausecker v. Germany,* cited above, paragraph 97).

Based on the case law of the Court, the latter has found that the referral of the applicant is incompatible *ratione personae* with the Constitution in cases where the applicants challenged, (i) the decisions of the European Union Rule of Law Mission in Kosovo (EULEX) (see Court case KI108/16, with applicants *Bojana Ivković, Marija Perić and Miro Jaredić*, Resolution on Inadmissibility, of 16 November 2016, paragraphs 46-49); (ii) the decisions of the ECtHR and some events that took place in Sweden (see Court case KI63/09, with applicant *Bajram Santuri*, Resolution on Inadmissibility, of 6 July 2011, paragraphs 49-50); and (iii) the Decree of the President for pardon, and which did not directly affect the rights of the respective applicant, but of other persons (see, Court case KI67/18, with applicant *Arbenita Arifi*, Resolution on Inadmissibility, of 14 May 2019, paragraph 44).

3. INCOMPATIBILITY RATIONE TEMPORIS

Rule 34 (Admissibility Criteria) (3) (d) of the Rules of Procedure

[...]
(3) The Court may also consider a referral inadmissible if any of the following conditions are met:
[...]
(d) The Referral is incompatible ratione temporis with the Constitution;
[...]

3.1 PURPOSE/MEANING OF INCOMPATIBILITY *RATIONE TEMPORIS* WITH THE CONSTITUTION

The compatibility *ratione temporis* of the referral with the Constitution, in principle, represents its temporal obligation to the Constitution and therefore also the temporal jurisdiction of the Court. The Constitution of the Republic of Kosovo entered into force on 15 June 2008, and, therefore, in order for a referral to be considered *ratione temporis* compatible with the Constitution, the alleged violations must have occurred after the entry into force of the Constitution. Public authorities can be held responsible for violations of the Constitution only for actions that occurred after the entry into force of the Constitution. The Court in each case, *ex-officio* and during the entire procedure, will examine the compatibility *ratione temporis* of the referral with the Constitution.

Having said that, based on the case law of the ECtHR, the Court has jurisdiction *ratione temporis* (i) to deal with continuous violations, which began before the entry into force of the Constitution and continued even after its entry into force (see, ECtHR case *Papamichalopoulos and Others v. Greece*, no. 14556/89, Judgment of 24 June 1993, paragraph 40); and (ii) for a case that dates before the entry into force of the Constitution, if the procedures developed after the entry into force of the Constitution, by themselves and separate from the previous actions, represent alleged constitutional violations (see, the ECHR case *Kotov v. Russia*, No. 54522/00, Judgment of 3 April 2012, paragraphs 68-69). However, the conduct of court proceedings after the entry into force of the Constitution, which did not annul the decision containing alleged constitutional violations, does not extend the jurisdiction of the Court (see, the ECHR case of *Blećić v. Croatia*, cited above, paras. 77-79 and 85).

The Court has found that the individual referrals, through which the violations of the rights and freedoms guaranteed by the Constitution are claimed and which occurred before the entry into force of the Constitution are not *ratione temporis* compatible with the Constitution (see, among others, Court cases KI198/19, with applicant *Besnik Kavaja*, Resolution on Inadmissibility, of 16 January 2020, paragraphs 36-37; KI152/11, with applicant *Bekim Murati*, Resolution on Inadmissibility, of 20 June 2012, paragraph 23; KI66/11, with applicant *Astrit Shabani* , Resolution on Inadmissibility, of 20 March 2012, paragraph 14; KI54/11, with applicant *Adem Qamili*, Resolution on Inadmissibility, of 29 November 2011, paragraphs 17-20; KI48/10, with applicant *Naser Rexhepi*, Resolution on Inadmissibility, of 16 December 2010, paragraph

22; KI28/11, with applicant *Ismet Boshnjaku* , Resolution on Inadmissibility, of 18 January 2012, paragraph 13; and KI34/10, with applicant *Bislim Kosumi*, Resolution on Inadmissibility, of 21 January 2011, paragraphs 14- 19). Similarly, the Court has treated the claims of the respective applicant separately , when separate procedures were conducted before and after the entry into force of the Constitution, finding that one of the applicant's claims related to a procedure conducted before the entry into force of the Constitution was *ratione temporis* incompatible with the Constitution, as long as it continued with the review and assessment of claims in relation to other judicial proceedings developed after the entry into force of the Constitution (see Court case KI62/19, with applicant *Gani Gashi*, Resolution on Inadmissibility, of 13 November 2019, paragraphs 44-45, through which the Court did not declare the applicant's referral in its entirety as inadmissible as *incompatible ratione temporis* with the Constitution).

When determining the time of the action which is claimed to have violated the rights and freedoms guaranteed by the Constitution, in accordance with the case law of the ECtHR, the Court takes into account the final decision which violated the rights of the applicant. However, the Court may take into account the facts that occurred before the entry into force of the Constitution, insofar as they have created a situation that extends even after the entry into force of the Constitution or that may be important to understand the facts that occurred after entry into force of the Constitution.

4. INCOMPATIBILITY RATIONE LOCI

Rule 34 (Admissibility Criteria) (3) (e) of the Rules of Procedure

[...]
(3) The Court may also consider a referral inadmissible if any of the following conditions are met:
[...]
(e) The Referral is incompatible ratione loci with the Constitution.
[...]

4.1 PURPOSE/MEANING OF INCOMPATIBILITY *RATIONE LOCI* WITH THE CONSTITUTION

Compatibility *ratione loci* of the referral with the Constitution, in principle, means that the alleged constitutional violations must have been committed within the territory of the Republic of Kosovo (see, the ECHR case, *Drozd and Janousek v. France and Spain*, cited above, paragraphs 84 -90). More precisely, referrals that contain allegations of human rights violations that were committed outside the territory of the Republic of Kosovo, are considered by the Court as inadmissible due to the lack of compatibility *ratione loci* with the Constitution.

In its case law, the Court has not yet had the opportunity to examine individual referrals related to incompatibility *ratione loci* with the Constitution. Having said that, based on the case law of the ECtHR, in the circumstances of the cases where it is necessary, compatibility *ratione loci* in an individual referral is examined by the Court even if the parties have not raised this claim (see, among others, the case of the ECtHR, *Vasiliciuc v. Republic of Moldova*, no. 15944/11, Judgment of 2 May 2017, paragraph 22).

VIII. DISMISSAL AND REJECTION OF REFERRAL

Rule 54 (Rejection and Rejection of the Referrals) of the Rules of Procedure, determines the circumstances when the Court dismisses or summarily rejects the referral of the applicant, submitted to the Court in cases when: (i) the claim of the applicant is not an active controversy or the claim does no longer represents a dispute because it has been resolved; and (ii) when the referral submitted to the Court has not been completed with the documentation and information specified according to Rule 25 (Filing of Referrals and Replies) of the Rules of Procedure.

1. CASE IS NO LONGER AN ACTIVE CONTROVERSY

Rule 54 (Dismissal and Rejection of Referrals) (1) (a) of the Rules of Procedure

(1) The Court may dismiss a referral when the Court finds that the allegation:
(a) Is no longer an active controversy.
[...]

In the event of a change in the circumstances related to the referral, after its submission to the Court and before the latter decides on the case, the Court may decide not to proceed with the further consideration of the admissibility criteria, as stipulated by Constitution, the Law and Rule 34 (Admissibility Criteria) of the Rules of Procedure and/or examination on the merits of allegations for violation of fundamental rights and freedoms guaranteed by the Constitution, when it finds that the allegation raised in the referral *"is no longer an active controversy".*

In such circumstances, before the Court examines the fulfillment of the procedural criteria of the referral, based on the case law of the ECtHR, it assesses (i) whether the circumstances that the applicants complained of still exist; and (ii) if the effect of the possible violation of the Constitution due to those circumstances has also been corrected (see, Court cases KI195/18, with applicant *Afrim Haxha*, Decision to reject the referral, of 23 July 2019, paragraphs 24-26 ; and KO98/20, with applicant *Hajrulla Çeko and 29 other deputies,* constitutional review of Decision No. 52/2020, Decision to strike out the referral, of 18 November 2020, paragraph 85; and ECtHR cases *El Majjaoui & Stichtung Touba Moskee v. The Netherlands*, No. 25525/03, Judgment of 20 December 2007, paragraph 30; *Pisano v. Italy*, No. 36732/97, Judgment of 27 July 2000, paragraph 42; and *Sisojeva and Others v. Latvia*, cited above, paragraph 97).

For example, the Court, in case KI195/18, decided to reject the referral of the applicant, due to the fact that before the Court decided on the relevant referral, the Supreme Court had annulled the contested Judgment of the Court of Appeals and consequently, the Court found that the contested Judgment of the Court of Appeals before this Court is not in force and as such, does not produce any legal effect for the applicant (paragraphs 14-26 of the Decision in case KI195/18, cited above).

2. CASE DOES NOT PRESENT A DISPUTE

Rule 54 (Dismissal and Rejection of Referrals) (1) (a) of the Rules of Procedure

(1) The Court may dismiss a referral when the Court finds that the allegation:
[...]
(b) does not present a dispute.

In the circumstances when the issue related to the subject of the assessment of the referral by the Court has been resolved, then the latter decides to reject the referral because the referral has remained without the object of consideration and the latter no longer represents a dispute or case before the Court (see, among others, Court cases KI91/20, with applicants *Qerim Berisha, Fadil Gashi, Tahir Morina, Selim Berisha, Naim Berisha, Burim Berisha, Z. B.*, Decision to dismiss the referral, of 5 May 2022, paragraph 47; KI155/15 and KI157/15, with applicants *Snežana Zdravković and Miloratka Nikolić*, Decision to reject the referral, of 17 May, paragraphs 42-45, and KI143/15, with applicant *Donika Kadaj-Bujupi*, Decision to reject the referral, of 8 February 2016, paragraphs 36-37).

In order for the Court to examine a case on its merits, it must first of all ascertain whether the case brought before it presents a specific dispute. In other words, the Court will first check the existence of a dispute between the applicant and the public authority that issued the contested act.

The case does not represent a dispute if the referral of the relevant applicant does not challenge a specific act of a public authority. For example, complaints about general non-application of the law do not in themselves present a dispute, as long as a specific act of a public authority is not challenged (see, among others, Court case KI97/23, with applicant *Gjevrije Zeqiri*, Decision to dismiss the referral, of 31 August 2023, paragraphs 29-31).

The Court also found that the cases with allegations of constitutional violations by the acts of public authorities do not represent a dispute, if the allegations of the applicants were addressed by any subsequent act (see Court cases KI155/15 and KI157/15, with applicants *Snežana Zdravković and Miloratka Nikolić*, cited above, paragraph 42; KI58/12, KI66/12 and KI94/12, with applicants *Selatin Gashi, Halit Azemi and group of Municipal Assembly Member of Vitia*, Decision to strike out the referral, of 5 July 2013, paragraph 45; and KI06/13, with applicant *Sulejman Mustafa*, Decision to strike out the referral, of 16 October 2013, paragraph 37).

3. REFERRAL IS INCOMPLETE OR UNCLEAR

Rule 54 (Dismissal and Rejection of Referrals) (2) (a) of the Rules of Procedure

(2) The Court may decide to summarily reject a referral if:
(a) The referral is incomplete or not clearly stated, despite the request or requests by the Court to the party to supplement or clarify the referral;
[...]

Article 48 (Accuracy of the Referral) of the Law on the Constitutional Court establishes the obligation of the applicant to accurately clarify the referral submitted before the Court in the context of (i) the concrete act of the public authority that he is challenging; and (ii) the fundamental rights and freedoms that he claims to have been violated through the contested act. Moreover, Rule 25 (Filing of Referrals and Replies) of the Rules of Procedure presents specifically and exhaustively the elements that a referral must contain, in order for it to be considered complete, the latter must be submitted using the official referral form published on the Court's website or its equivalent and must include (i) the date of its submission and be signed by the party submitting it; (ii) the name and address of the party submitting the referral; (iii) the name and address of the representative for the submission of documents, if any; (iv) authorization for representation; (v) the name and address of the opposing party or parties, if known, to whom the documents are sent; (vi) the legal protection required; (vii) brief summary of facts; (viii) reasoning about the admissibility and merits of the referral; and (ix) supporting information and documentation.

The Court, through its case law, has consistently emphasized that the burden to build, clarify and fulfill the referral falls on the applicants, who have a direct interest in order for their claims and allegations to be effectively addressed by the Court (see, among others, Court cases KI01/ 23, with applicant *Amir Hamza*, Decision to reject the referral, of 14 December 2023; KI 60/20, with applicant *The Council of the Islamic Community*, Decision on rejection of 18 February 2021, paragraph 36; KI90/20, with applicant *Arben Boletini*, Decision on the rejection of the referral, of 9, December 2020, paragraph 25; and KI78/20, KI79/20 and KI80/20 , with applicant *Hilmi Aliu and others*, Decision to reject the referral, of 7 December 2020, paragraph 33 and the references used therein).

In cases when the applicants do not respond to the Court's request for clarification and completion of the request, the Court declares these referrals as unclear and incomplete, and as a result does not consider their allegations, summarily rejecting them (see, among others, Court cases KI 60/20, with applicant *The Council of Islamic Community*, Decision on rejection of 18 February 2021, paragraph 36; KI90/20 , with applicant *Arben Boletini*, Decision on rejection of the referral, of 9 December 2020, paragraph 25 and KI78/20, KI79/20 and KI80/20, with applicant *Hilmi Aliu and Others*, Decision to reject the referral, of 7 December 2020, paragraph 33 and references used therein).

In these cases, the Court considered that the referrals do not meet the procedural criteria for further consideration, due to the lack of supporting documentation, among others, in cases when: (i) the applicants have not specified and submitted the act of the public authority which they challenge as required by the Constitution, Law and the Rules of Procedure (see, among others, cases KI118/22, with applicant *Bekim Bajrami*, Constitutional review of the unspecified act of the public authority, Decision to reject the referral, of 4 April 2023, paragraph 36; KI13/23, with applicant *Marigona Djordjević-Jakaj*, Constitutional review of

the unspecified act of the public authority, Decision to reject the referral, of 29 August 2023; and KI56/23, with applicant *Lendita Zherka,* Constitutional review of the unspecified act of the public authority, Decision to reject the referral, of 31 August 2023); (ii) in the referral it is specified that the applicant is represented by a representative, but they have not submitted a valid authorization for representation before the Court (see, among others, case KI 204/22, with the applicant *Ismet Islami*, *the alleged applicant of Fatmir and Shpejtim Behrami*, Decision to reject the referral, of 27 April 2023; and KI02/20, with applicant *Skender Musa as the alleged representative of E.Z.*, Decision to reject the referral, of 29 April 2020); and (iii) the applicant has not completed the referral with all supporting documentation, namely various acts of public authorities, despite the request of the Court (see, among others, case KI101/21, applicant "*N. T .Sh. Morina B*", Decision on rejection, of 8 September 2021).

4. REPETITION OF REFERRAL

Rule 54 (Dismissal and Rejection of Referrals) (2) (b) of the Rules of Procedure

(2) The Court may decide to summarily reject a referral if:
[...]
(b) The referral is repetitive of a previous referral decided by the Court.

An individual complaint within the meaning of paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution should not be seen by the applicants as an opportunity to repeatedly ask the Court to reopen its decisions and adjudicate the same case again (see Court cases KI105/16, with applicant *Feti Gashi* Decision to reject the referral, of 4 April 2017, paragraph 21; and KI96/23, with applicant *Muhamet Miftari*, Decision to reject the referral, of 31 August 2023, paragraph 35), because based on article 116 [Legal Effect of Decisions] of the Constitution, "*the decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo*" (see, among others, Court cases KI26/14, with applicant *Bajrush Gashi*, Decision to reject the referral, of 26 March 2015, paragraphs 26 and 27; KI102/19, with applicant *Bedri Gashi* , Decision to reject the referral, of 7 November 2019, paragraphs 21 and 22; and KI43/21, with applicant *N.T.P Arta Impex*, Decision to reject the referral, of 5 May 2021, paragraph 23).

In what follows, the Court assessed that in case the applicant raises the same allegations and presents the same facts and evidence as in the previous referral, decided by the Court, the latter summarily rejects the referral (see, among others, Court case KI43/21, with applicant *N.T.P Arta Impex*, cited above, paragraphs 25-26).

Based also on the case law of the ECtHR, the Court emphasizes that the only way to consider a referral related to the same facts as in the previous referral, is that the applicant must really provide new information which have not previously been examined by the Court (see, among others, the Court case KI96/23, with the applicant *Muhamet Miftari*, cited above, paragraph 35; and also see the ECtHR case, *Kafkaris v. Cyprus*, no. 9644/09 , Decision on admissibility, of 21 June 2011, paragraph 68).

5. ABUSE OF RIGHT TO PETITION

Rule 54 (Dismissal and Rejection of Referrals) (2) (c) of the Rules of Procedure

(2) The Court may decide to summarily reject a referral if:
[...]
(c) The applicant has abused his/her right to petition.

The right to petition, namely the right to file referrals before the Court, in the sense of paragraph 7 of article 113 [Jurisdiction and Authorized Parties] of the Constitution, cannot be abused. Accordingly, this right cannot be used outside the operation of what it is guaranteed for.

More precisely and according to the case law of the ECtHR, the "*abuse*" of the right to petition according to paragraph 3 of article 35 (Admissibility criteria) of the ECHR, are considered cases in which: (i) the applicant knowingly was based on untrue facts (see, ECtHR case *Gross v. Switzerland*, no. 67810/10, Judgment, of 30 September 2014, paragraphs 28 and 37); (ii) the applicant uses inappropriate language (see the ECtHR case, *Zhdanov and Others v. Russia*, no. 12200/08, Judgment, of 16 July 2019 paragraphs 79-81); (iii) the applicant does not notify the Court of the essential facts, whether this is at the time of submitting the referral or even in cases where important facts are presented during the procedure (see the ECtHR case *Avag GEVORGYAN and Others v. Armenia* No. 66535/10, Decision, of 14 January 2020, paragraphs 31-37); (iv) the deception of the Court is done by the applicant's representative (see, among others, the ECtHR case, *Bekauri v. Georgia*, no. 14102/02, Judgment, of 10 April 2012, paragraphs 21-25; and (v) the applicant repeatedly submits unfounded applications, displaying clearly abusive behavior, which unnecessarily burdens the Court (see, ECtHR cases, *G. & D.M. v. The United Kingdom*, no. 13284/87, Judgment, of 15 October 1987; *Nicholas Philis v. Greece*, No. 28970/95, Judgment, of 17 October 1996; and *Bekauri v. Georgia*, cited above, paragraph 21).

Based on the aforementioned case law, the Court, in the cases KI228/13, KI04/14, KI11/14, KI13/14, with applicants *Lulzim Ramaj and Shahe Ramaj*, Resolution on Inadmissibility, of 24 March 2014, has found abuse of the right to petition, as it is established in the Rules of Procedure, because the applicant (i) had continuously submitted referrals related to identical issues of the subject, for which the Court had already decided; and (ii) in the present referrals, the latter submitted "*unfounded, repetitive, abusive and vexatious referrals, thereby hampering the work of the Court and taking away its time and resources.*" (see paragraphs 59-60 of this Resolution).

LIST OF CITED CASES OF THE CONSTITUTIONAL COURT

- **KI208/23,** Applicant: *Kosovo Telecom J.S.C.,* Resolution on Inadmissibility, of 31 January 2024
- **KI134/23,** Applicant: *Feride Berisha*, Resolution on Inadmissibility, of 17 January 2024
- **KI97/23,** Applicant: *Gjevrije Zeqiri*, Decision to dismiss the referral, of 31 August 2023
- **KI96/23,** Applicant: *Muhamet Miftari*, Decision to reject the referral, of 31 August 2023
- **KI61/23,** Applicant: *Hedie Bylykbashi*, Resolution on Inadmissibility, of 25 May 2023
- **KI57/23,** Applicant: *Ismet Ferati*, Resolution on Inadmissibility, of 30 August 2023
- **KI56/23,** Applicant: *Lendita Zherka,* Decision to reject the referral, of 31 August 2023
- **KI34/23,** Applicant: *Veton Syla*, Resolution on Inadmissibility, of 29 August 2023
- **KI26/23,** Applicant: *Kastrioti Petrol*, Resolution on Inadmissibility, of 7 November 2023
- **KI25/23,** Applicant: *Shpejtim Ahmeti*, Resolution on Inadmissibility, of 25 May 2023
- **KI24/23,** Applicant: *Sami Nuredini*, Resolution on Inadmissibility, of 27 April 2023
- **KI13/23,** Applicant: *Marigona Djordjević-Jakaj*, Constitutional review of the unspecified act of the public authority, Decision to reject the referral, of 29 August 2023
- **KI07/23,** Applicant: *Musli Morina*, Resolution on Inadmissibility, of 12 April 2023
- **KI204/22,** Applicant: *Ismet Islami*, *the alleged applicant of Fatmir and Shpejtim Behrami*, Decision to reject the referral, of 27 April 2023
- **KI193/22,** Applicant: *Avni Selmani*, Resolution on Inadmissibility, of 30 August 2023
- **KI 144/22,** Applicant: *Sebahate Dërvishi*, Resolution on Inadmissibility, of 20 September 2022
- **KI143/22,** Applicant: *Hidroenergji L.L.C*, Judgment, of 15 December 2022;
- **KI140/22,** Applicant: *Imer Mustafa and others*, Resolution on Inadmissibility, of 22 December 2022
- **KI126/22,** Applicant: *Gëzim Bajrami*, Resolution on Inadmissibility, of 25 January 2023
- **KI118/22,** Applicant: *Bekim Bajrami*, Constitutional review of the unspecified act of the public authority, Decision to reject the referral, of 4 April 2023
- **KI111/22,** Applicant: *Bechtel Enka GP.O.P*,, Resolution on Inadmissibility, of 25 January 2023
- **KI96/22,** Applicant: *Naser and Uliks Husaj*, Resolution on Inadmissibility, of 29 August 2023;
- **KI89/22,** Applicant: *Xhelal Plakolli*, Resolution on Inadmissibility, of 7 March 2023;
- **KI57/22** and **KI79/22,** Applicants: *Shqipdon Fazliu and Armend Hamiti*, Judgment of 4 July 2022
- **KI71/22,** Applicant: *Muhamet Mehmeti*, Resolution on Inadmissibility, of 14 November 2023;
- **KI49/22,** Applicant: *Zejnel Ninaj*, Resolution on Inadmissibility, of 30 August 2023
- **KI44/22,** Applicant: *Privatization Agency of Kosovo*, Resolution on Inadmissibility, of 22 September 2022
- **KI31/22,** Applicant: *Fidan Hoti*, Resolution on Inadmissibility, of 18 January 2023
- **KI10/22,** Applicant: *Trade Union of the Institute of Forensic Medicine*, Judgment of 18 July 2022

- **KI03/22,** Applicant: *EPS Trgovina* (Resolution on Inadmissibility, of 29 September 2022
- **KI234/21,** Applicant: *N.P.N Çlirimi*, Resolution on Inadmissibility of 8 June 2022
- **KI219/21,** Applicant: *Isuf Ferati,* Resolution on Inadmissibility, of 19 July 2022
- **KI216/21,** Applicant: *Kujtim Rezniqi*, Resolution on Inadmissibility, of 31 March 2022
- **KI203/21** and **KI205/21,** Applicants: *Nexhmije and Sahit Kabashi*, Resolution on Inadmissibility, of 9 March 2022
- **KI202/21,** Applicant: *Kelkos Energy L.L.C.*, Judgment, of 29 September 2022
- **KI188/21,** Applicants: *Zenel and Isuf Plashniku*, Resolution on Inadmissibility, of 19 July 2022
- **KI186/21,** Applicant: *Faik Miftari*, Resolution on Inadmissibility, of 10 December 2021
- **KI185/21,** Applicant:*"CO COLINA" LLC*, Judgment of 8 February 2023
- **KI183/21,** Applicant: *Ejup Koci,* Resolution on Inadmissibility, of 30 March 2022
- **KO173/21,** Applicant: *Municipality of Kamenica*, Judgment of 7 December 2022
- **KI170/21,** Applicant: *Arianit Sllamniku and others*, Resolution of 10 December 2021
- **KO145/21,** Applicant: *Municipality of Kamenica*, Judgment of 10 March 2022
- **KI129/21,** Applicant: *Velerda Sopi*, Judgment of 7 March 2023
- **KI119/21,** Applicant: *Ahmet Hoti and others*, Resolution on Inadmissibility, of 22 June 2022
- **KI111/21,** Applicant: *Shaban Murati*, Resolution on Inadmissibility, of 12 April 2023
- **KI107/21,** Applicant: *Ramiz Hoti*, Resolution on Inadmissibility, of 21 October 2021
- **KI101/21,** Applicant: "*N. T .Sh. Morina B*", Decision on rejection, of 8 September 2021
- **KI82/21,** Applicant: *Municipality of Gjakova*, Judgment of 9 September 2021
- **KI76/21,** Applicant: *Qemajl Babuni*, Resolution, of 10 November 2021
- **KI75/21,** Applicant: *Abrazen LLC*", "*Energy Development Group Kosova LLC", "Alsi& Co. Kosovo LLC" and "Building Construction LLC*", Judgment of 19 January 2022
- **KI74/21,** Applicant: *Halim Krasniqi*, Resolution on Inadmissibility, of 27 October 2022
- **KO73/21,** Applicant: *Municipality of Kamenica*, Judgment of 7 December 2022
- **KI70/21,** Applicant: *Burhan Tusha*, Resolution on Inadmissibility, of 2 June 2021
- **KI63/21,** Applicant: *Hysen Metahysa*, Resolution on Inadmissibility, of 7 October 2021
- **KI59/21,** Applicant: *Partia Demokratike e Kosovës*, Resolution on Inadmissibility, of 22 July 2021
- **KI48/21,** Applicant: *Xhavit R. Sadrija*, Resolution on Inadmissibility, of 30 June 2021
- **KI45/21,** Applicant: *Samedin Bytyqi*, Resolution on Inadmissibility, of 20 May 2021
- **KI43/21,** Applicant: *N.T.P Arta Impex*, Decision to reject the referral, of 5 May 2021
- **KI35/21,** Applicant: *Sulejman Mushoviq,* Resolution on Inadmissibility, of28 July 2021
- **KI32/21,** Applicant: *Hasan Shala*, Resolution on Inadmissibility of 30 June 2021
- **KI25/21,** Applicant: *Ymer Koro*, as *the alleged representative of K.Lj. and K.B.*, Decision to reject the referral, of 21 July 2021
- **KI21/21,** Applicant: *Asllan Meka*, Resolution on Inadmissibility, of 28 April 2021
- **KI15/21,** Applicant: *Bersim Sulja*, Resolution on Inadmissibility, of 28 July 2021
- **KI08/21,** Applicant: *Bersim Sulja*, Resolution on Inadmissibility, of 28 July 2021

- **KI195/20,** Applicant: *Aigars Kesengfelds*, Judgment, of 29 March 2021
- **KI193/20,** Applicant: *Bujar Hoti*, Resolution on Inadmissibility, of 5 May 2021
- **KI182/20,** Applicants: *Sedat Kovaçi, Servet Ergin, Ilirjana Kovaçi and Sabrije Zhubi*, Judgment of 20 January 2022
- **KI179/20,** Applicant: *Kosovo Telecom J.S.C.*, Resolution on Inadmissibility, of 27 January 2021
- **KI175/20,** Applicant: Privatization Agency of Kosovo, Resolution on Inadmissibility of 26 March 2021
- **KI174/20,** Applicant: *DE-KO l.l.c.*, Resolution on Inadmissibility, of 10 February 2021
- **KI164/20,** Applicant: *Rafet Haxhaj*, Resolution on Inadmissibility, of 20 January 2021
- **KI161/20,** Applicant: *Bedri Gashi*, Resolution on Inadmissibility, of 10 September 2021
- **KI160/20,** Applicant:, *Municipality of Gjilani*, Resolution on Inadmissibility, of 11 May 2022
- **KI147/20, KI148/20, KI149/20, KI150/20,KI151/20 and KI152/20, KI137/20, KI147/20, KI148/20, KI149/20, KI150/20,KI151/20 and KI152/20,** Applicants: *Nezir Neziri and 5 others*, Resolution on Inadmissibility, of 20 January 2021
- **KI124/20** Applicant: *Muhamed Ali Ceysűlmedine*, Resolution on Inadmissibility, of 20 January 2021
- **KI118/20,** Applicant: *Selim Leka,* Resolution on Inadmissibility, of 21 October 2021
- **KI115/20,** Applicant: *Muharrem Rama*, Resolution on Inadmissibility, of 3 November 2021
- **KO98/20,** Applicant: *Hajrulla Cekoand 29 other deputies,* constitutional review of Decision No. 52/2020, Decision to strike out the referral, of 18 November 2020
- **KI97/20,** Applicant: *Nehat Salihu*, Decision on Inadmissibility, of 26 March 2021
- **KI91/20,** Applicants: *Qerim Berisha, Fadil Gashi, Tahir Morina, Selim Berisha, Naim Berisha, Burim Berisha, Z. B.*, Decision to dismiss the referral, of 5 May 2022
- **KI90/20,** Applicant: *Arben Boletini*, Decision on the rejection of the referral, of 9, December 2020
- **KI88/20,** Applicant: *Football Club "Liria",* Resolution on Inadmissibility, of 30 September 2020
- **KI78/20, KI79/20** and **KI80/20,** Applicant: *Hilmi Aliu and Others*, Decision to reject the referral, of 7 December 2020
- **KI77/20,** Applicant: *Kujtim Zarari*, Resolution on Inadmissibility, of 11 November 2020
- **KI 60/20,** Applicant: *Municipality of Gjilani*, Resolution on Inadmissibility of 11 May 2022
- **KI40/20,** Applicant: *Sadik Gashi*, Resolution on Inadmissibility, of 20 January 2021
- **KI39/20,** Applicant: *Cihan Ozkan*, Resolution on Inadmissibility, of 27 January 2021
- **KI27/20,** Applicant: *Vetëvendosje! Movement*, Judgment of 22 July 2020
- **KI11/20,** Applicant: *Fllanza Pozhegu*, Resolution on Inadmissibility, of 11 November 2020
- **KI02/20,** Applicant: *Skender Musa as the alleged representative of E.Z.*, Decision to reject the referral, of 29 April 2020
- **KI230/19,** Applicant: *Albert Rakipi*, Judgment of 9 December 2020
- **KI229/19,** Applicant: *Non-Governmental Organization "Association for Culture, Education and Schooling AKEA"*, Resolution on Inadmissibility, of 20 January 2021
- **KI218/19,** Applicant: *Shani Morina*, Resolution on Inadmissibility, of 5 February 2020
- **KI211/19,** Applicants: *Hashim Gashi, Selajdin Isufi, B.K., HZ., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I. and S.R*, Resolution on Inadmissibility, of 11 November 2020

- **KI207/19,** Applicants: *The Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, Judgment of 1 December 2020
- **KI206/19,** Applicant: *Mladen Nikolić*, Resolution on Inadmissibility, of 26 February 2020
- **KI198/19,** Applicant: *Besnik Kavaja*, Resolution on Inadmissibility, of 16 January 2020
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