



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

Prishtina, 21 August 2017
Ref. No.:RK 1119/17

RESOLUTION ON INADMISSIBILITY

in

Referrals No. KI20/17, KI21/17 and KI22/17

Applicants

**Banka e Kosovës J.S.C. Belgrade;
Jugobanka J.S.C., Beobanka J.S.C., Beogradska Banka J.S.C.;
and Momčilo Nedeljković and 410 employees of Mines Kishnica and
Novo Brdo**

Constitutional review of the Law No. 05/L-120 on Trepca.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicants

1. The Referral KI20/17 was submitted by Banka e Kosovës J.S.C. Belgrade, with its seat in Belgrade (hereinafter, the first Applicant), which is represented by Dobrica Lazić, a lawyer from Gračanica.

2. The Referral KI21/17 was submitted by Jugobanka J.S.C.; Beobanka J.S.C. and Beogradska banka J.S.C., with their seat in Belgrade (hereinafter, the second Applicant), which are represented by Dobrica Lazić, a lawyer from Gračanica.
3. The Referral KI22/17 was submitted by Momčilo Nedeljković on behalf of other 410 employees of the Mine Kishnica and Novo Brdo (hereinafter, the third Applicant), who are as it follows:

1. Momčilo Nedeljković,	2. Stana Ivanović,
3. Slobodan Krstić,	4. Zagorka Jovanović
5. Tihomir Nedeljković,	6. Voja Micić,
7. Jovica Milanović,	8. Nuredin (Sadula) Gradina,
9. Zorica Simić,	10. Hazir Haziri,
11. Srbobran Maksimović ,	12. Dušanka Jovanović,
13. Uroš Maksimović,	14. Dragoljub Trajković,
15. Ljifa Ramić,	16. Slobodan (Srećko)Kostić,
17. Šema Jašari,	18. Svetlana Milovanović,
19. Trajko Andrejević,	20. Ljubiša Trajković
21. Radojica Grbić,	22. Slavica (Živojin) Marković 22,11,1956
23. Lutfi Breznica,	24. Trifun Jovanović,
25. Jovica Jorgić,	26. Sretko Janićijević,
27. Mirko (Petar) Aritonović,	28. Predrag (Ranko) Arsić,
29. Ljubiša(Milorad) Simić,	30. Novica Milošević,
31. Milorad (Jordan) Simić	32. Iljmija Zećiri,
33. Zivorad Nedeljković,	34. Stojanka (Radovan) Sekulić, 3
35. Zoran (Stanko) Stošić,	36. Slobodan Janićijević,
37. Zorica Maksimović,	38. Vesna Maksimović,
39. Mirjana Ćirković,	40. Hamdi Garip,
41. Gorica Popović,	42. Milivoj Đorđević,
43. Vesna Krstić,	44. Milica Andrejević,
45. Dobri Filipović,	46. Vlastimir Simić,
47. Jordan Stojanović,	48. Slaviša Krstić,
49. Zoran Lazarević,	50. Pavle Maksimović,
51. Gradimir Mirković,	52. Slaviša (Milivoja) Trajković,
53. Dragoslav Marković,	54. Milorad Mladenović,
55. Miroslav Ivanović,	56. Dragan Aleksić,
57. Ljiljana Filić	58. Slađana Đurović,
59. Zoran Ivić,	60. Branko Pavić,
61. Dobrivoje Dimić	62. Dragiša Todorović
63. Vehbi Bitić	64. Milka Ivanović
65. Bogoljub Micić	66. Živorad Stević
67. Časlav Nedeljković	68. Slavica (Živojin) Marković11,031959
69. Enver Fazlija	70. Radisav Dimitrijević
71. Ljiljana Dimitrijević	72. Stana Kostić
73. Srđan (Novica) Ristić	74. Blagoje Marković
75. Nuredin (Sadula) Gradina,	76. Milica Milanović
77. Javorka Spasić	78. Srbobran Janićijević

79.	Branko (Vladimira) Jovanović	80.	Stanimirka Trajković
81.	Blagica Živić	82.	Živka Stević
83.	Veljko Jovanović	84.	Ferdane Nikšić
85.	Zoran (Stanko) Stošić	86.	Slavica Stalević
87.	Jagodinka Vujević	88.	Branislav Andrejević
89.	Živka Ćurčić	90.	Milan Danić
91.	Osman Jašari	92.	Branko Đorđević
93.	Dema Jašarević	94.	Radomir Ćirković
95.	Ranko Velić	96.	Dana Milovanović
97.	Velimir Milovanović	98.	Radoslav Miladinović
99.	Branislav Ničić	100.	Slobodan Petrović
101.	Stana Maksimović	102.	Radisav Ivanović
103.	Slavica Vanić	104.	Vojislav Stević
105.	Momčilo Mirković	106.	Vidosav Ilić
107.	Elez Jašarević	108.	Nikola Gudžić
109.	Žika Stević	110.	Milance Ćurčić
111.	Dojčin Sekulić	112.	Negovan Marinković
113.	Uroš Stević	114.	Olgica Gudžić
115.	Senad Salijević	116.	Dimitrija Đorđević
117.	Blagica Perić	118.	Zvonimir Marković
119.	Ljubiša Pavić	120.	Živojin Andrejević
121.	Sretko Ničić	122.	Srđan Jovanović
123.	Borisav Andrejević	124.	Branko Todorović
125.	Slobodanka Perić	126.	Miloš Nedeljković
127.	Branka Anderjević	128.	Zoran Stević
129.	Mladen Karadžić	130.	Danica Gudžić
131.	Slađana Dragutinović	132.	Biserka Bulajić
133.	Rodoljub Micić	134.	Jugoslav Nedeljković
135.	Milorad (Miladin) Velić	136.	Dragoljub Sevanović
137.	Milan Milić	138.	Zoran Nojić
139.	Milan Jocić	140.	Vlajanka Perić
141.	Branislav Arsić	142.	Milenko Cvejić
143.	Namon Statovci	144.	Verica Vasić
145.	Siniša Maksimović	146.	Veselj Muslijević
147.	Dragan Krstić	148.	Titomir Ivić
149.	Danilo Stevanović	150.	Džema Garip
151.	Dragiša Perić	152.	Emin Gradina
153.	Živojin Živić	154.	Milivoje Simijonović
155.	Medenica Andrejević	156.	Jelica Adamović
157.	Dojčin Đorđević	158.	Dobrila Nedeljković
159.	Milivoje Đekić	160.	Milorad Milovanović
161.	Miloš Radovanović	162.	Dragoljub Stojanović
163.	Šašivar Salijević	164.	Desanka Nikolić
165.	Slobodan Lazarević	166.	Vladimir Petrović
167.	Strahinja Kostić	168.	Nadežda Samardžić
169.	Dejan (Ljubinko) Stojanović	170.	Ljubinko Petrović
171.	Novica Ćurčić	172.	Ajredin Gaši
173.	Slađana Ilić	174.	Radomir Ničić
175.	Naser Jašarević	176.	Slaviša Nedeljković

177. Stanimir Živić	178. Suzana Stevanović
179. Ljubinko Jovanović	180. Refki Salijević
181. Novica Trajković	182. Olga Danić
183. Slobodanka Ničić	184. Dobrivoje Nedeljković
185. Svetomir Cvejić	186. Dejan Živić
187. Gligorije Stoilković	188. Nenad Filić
189. Mile Jović	190. Saša Dragutinović
191. Miro Mirković	192. Živko Marković
193. Srboljub Pavić	194. Srba Marinković
195. Ljubičica Živanović	196. Vesna Džunić
197. Zoran Milovanović	198. Radovan (Božidar) Perić
199. Živorad (Srećko) Jovanović	200. Goroljub Dimić
201. Slavica Golubović	202. Milivoje Janković
203. Vlastimir Petrović	204. Miodrag Kostić
205. Slavica Arsenijević	206. Jovan Ivković
207. Slobodan Arsić	208. Žikica Perić
209. Živojin Zlatković	210. Branka Stojaović
211. Jagoš Stojković	212. Živorad Stošić
213. Mića Martinović	214. Grade Filić
215. Vladimir Mitrović	216. Dejan Simijonović
217. Tihomir Miljković	218. Milorad (Đorđe) Miljković
219. Srećko (Dobri) Savić	220. Srđan Kostić
221. Dobri Savić	222. Ivica Vasić
223. Slađan Simonović	224. Ranko Simonović
225. Svetozar Tasić	226. Živko Maksimović
227. Ljuba Miljković	228. Bojan Pavić
229. Goran Stojanović	230. Ljubisav Savić
231. Slaviša Ristić	232. Živojin Kostić
233. Dragan Marković	234. Mliladin Kostić
235. Srećko (Stanko) Savić	236. Dragi Stojanović
237. Momčilo Ivković	238. Bojan Jovanović
239. Vlada Stošić	240. Branko Dikić
241. Dragan Milovanović	242. Branko (Aleksandar) Jovanović
243. Goran Stošić	244. Slaviša Đokić
245. Branislav Perić	246. Zoran Pavić
247. Stanoja Đorđević	248. Goran Filić
249. Zoran Simijonović	250. Janko Lukić
251. Elez Jašari,	252. Dobrivoje Stević
253. Branislav Dikić	254. Dragan Filić
255. Miodrag Svilanović	256. Stojan Đorđević
257. Mira Antić	258. Goran Ivanović
259. Mira Marković	260. Srđan Vučković
261. Zoran (Slavko) Jovanović	262. Milovan Andrejević
263. Vlastimir Andrejević	264. Trajan (Uroš) Ivković
265. Miodrag Jovanović	266. Vladimir Živković
267. Dragiša Ivanović	268. Miodrag Simijonović
269. Obrad Perić	270. Zoran Ivković
271. Mirna Živić	272. Slavko Trajković

273. Trajan Filić	274. Goran Pešić
275. Zoran Dikić	276. Svetozar Jovanović
277. Dragan (Novica)Trajković	278. Siniša Stanković
279. Velibor Stajković	280. Predrag (Živko) Arsić
281. Mladen Savić	282. Zaoran Stojković
283. Miodrag Trajković	284. Miro Stojković
285. Trajan (Milutin) Ivković	286. Živorad (Srboljub) Jovanović
287. Nebojša Kostić	288. Miodrag Simonović
289. Nazmi Bunjaku	290. Mileva Danić
291. Mehmet Jašari	292. Alija Osmani
293. Slaviša Kostić	294. Vlastimir (Nikodije) Jovanović
295. Miroslav Andrejević	296. Dragan (Svetko)Trajković
297. Nebojša Stanković	298. Branko Lazić
299. Tihomir Marković	300. Slobodan Marković
301. Goran Ristić	302. Azir Jašari
303. Aleksandar Stanković	304. Negovan Ristić
305. Slobodan (Đorđe) Kostić	306. Slavica Mitić
307. Slobodanka Zdravković	308. Boško Milovanović
309. Goran Stojković	310. Velibor Mirković
311. Vlastimir (Slavko)Jovanović	312. Zlatko Kostić
313. Ismeta Jašari	314. Radovan (Božidar) Perić
315. Boža Ristić	316. Radmila Vasić
317. Milorad (Serafin) Miljković	318. Jana Janković
319. Dragoljub Nedeljković	320. Živko Stojanović
321. Srđan Stanković	322. Branko Ristić
323. Dušica Nedeljković	324. Rada Savić
325. Rasim Shala	326. Anđel Nedeljković
327. Biserka Vasić	328. Nada Josifović
329. Mirko (Petar) Aritonović	330. Milorad (Jordan) Simić
331. Vesna Kostić	332. Stojanka (Radovan) Sekulić 3
333. Slavica Bulajić	334. Srđan Milovanović
335. Milorad Filić	336. Srđan (Novica) Ristić
337. Ivana Ristić	338. Dobrinka Trajković
339. Milan Živković	340. Velimir Ivković
341. Tomislav Perić	342. Randel Milić
343. Ranko Marković	344. Rexhep Bytyqi
345. Obrad Jovanović	346. Dejan (Bogoljub)Stojanović
347. Vlastimir Perić	348. Dragan Živković
349. Zvonimir Đokić	350. Svetozar Lazić
351. Ljubisav Simić	352. Vojislav Stojković
353. Milorad Vasić	354. Hamit Bytyqi
355. Slaviša (Stojan) Trajković	356. Goran Trajković
357. Ljubiša (Milorad) Simić	358. Vebija Tahiri
359. Vladimir Jovanović	360. Mića Kostić
361. Aleksandar Stevanović	362. Saša Jovanović
363. Milorad (Miladin)Velić	364. Branislav Micić
365. Živojin Aleksić	366. Džemalj Salijević
367. Živorad (Sava) Jovanović	368. Zoran Zlatković

369. Stojanka (Radovan) Sekulić 3	370. Dragan Vasić
371. Vojislav Filić	372. Trajan Bogdanović
373. Negovan Mladenović	374. Ljubivoje Nedeljković
375. Živojin Jovanović	376. Ilija Milić
377. Aleksandar Jovanović	378. Miloš Stević
379. Nadežda Trajković	380. Vasiljko Stolić
381. Velija Tairović	382. Milivoje Mitić
383. Miloš Danić	384. Šukrija Šerifović
385. Miodrag Šešlija	386. Živorad Mirković
387. Vladimir Dašić	388. Smiljana Žarković
389. Miodrag Nedeljković	390. Dejan (Novica) Stojanović
391. Slaviša Denić	392. Ljubica Živić
393. Duška Petrović	394. Elena Stanojkovski
395. Ivan Mikić	396. Zorica Velić
397. Radojica Ristić	398. Slavica Kostić
399. Radislav Perić	400. Snežana Živić
401. Zoran Nedeljković	402. Zoran Ničić
403. Goran Miljković	404. Ramadan Jašarević
405. Gordana Popović	406. Nebojša Veselinović
407. Zoran (Dobrivoje) Jovanović	408. Siniša Perenić
409. Zvonimir Stojanović	410. Ivan Đorđević
411. Verica Velić	

4. The third Applicant is represented by Žarko Gajić, Vasilije Arsić and Zoran Popović, lawyers from Gračanica.

Challenged Law

5. All Applicants challenge the compatibility with the Constitution of the Law No. 05/L-120 on Trepça (hereinafter, the Law on Trepça) adopted by the Assembly on 08 October 2016, and promulgated, published and entered into force on 31 October 2016.

Subject matter

6. The subject matter of the Referrals KI 20/17 and KI 21/17 is the assessment of the constitutional compatibility of the challenged Law on Trepça, which allegedly is contrary to the Applicant's rights guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 1 of Protocol 1 [Protection of property] of the European Convention of Human Rights (hereinafter, Article 1 of Protocol 1)
7. The subject matter of the Referral KI 22/17 is the assessment of the constitutional compatibility of the challenged Law on Trepça, which allegedly "denied" the Applicant's rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions] and 156 [Refugees and Internally Displaced Persons] of the

Constitution, as well as Article 1 of Protocol 1 [Protection of property] of the European Convention of Human Rights (hereinafter, Article 1 of Protocol 1).

8. The Applicants request the Court to impose an interim measure “*and to suspend the application (...) of the Law on Trepca No. 05/L- 120 (...) until the Court decides on the compatibility of this law with the Constitution of Kosovo*”

Legal basis

9. The Referrals are based on Article 21 (4), 113 (7) and 116 of the Constitution, Articles 20, 27 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rules 29 and 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

10. On 27 February 2017, the Applicants submitted the Referrals KI 20/17, KI 21/17 and KI 22/17 to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
11. On 20 March 2017, in the Referral KI 20/17, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
12. On 20 March 2017, in the Referral KI 21/17, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Cukalovic and Selvete Gërxhaliu Krasniqi.
13. On 20 March 2017, in the Referral KI 22/17, the President of the Court appointed Judge Selvete Gërxhaliu Krasniqi as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding) Snezhana Botusharova and Gresa Caka Nimani.
14. On 31 March 2017, in the Referral KI 22/17, the Court notified the third Applicant about the registration of the Referral and requested them to submit the power of attorney on the representation of Momčilo Nedeljković and of 410 other employees of the Mine Kishnica and Novo Brdo.
15. On 12 April 2017, in the Referral KI20/17 and KI21/17, the Court notified the first and second Applicants about the registration of their Referrals.
16. On 13 April 2017, the third Applicant submitted to the court the power of attorney for the representation of Momčilo Nedeljkovic and of 410 other employees of the Mine Kishnica and Novo Brdo.
17. On 27 April 2017, the Court notified the Assembly of the Republic of Kosovo (hereinafter, the Assembly) about the Referral KI22/17 and invited them to submit any comments they may have within 15 (fifteen) days of receipt of the notification.

18. On 03 May 2017, the Court notified the Assembly about the Referrals KI20/17 and KI21/17 and invited them to submit any comments they may have within 15 (fifteen) days of receipt of the notification.
19. On 04 May 2017, in accordance with Rule 37 (1) of the Rules of Procedure, the President of the Court ordered the joinder of Referrals KI21/17 and KI22/17 to the Referral KI20/17 and, accordingly, the Judge Rapporteur and the composition of the Review Panel in all three cases remained the same as in the Referral KI20/17.
20. On 05 May 2017, the Court notified all the three Applicants and the Assembly about the joinder of the Referrals.
21. On 3 July 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts related to Referrals KI20/17 and KI21/17

22. On 28 December 2012, the first and second Applicant filed a claim with the Privatization Agency of Kosovo (hereinafter: the PAK) as an administrator of the Mining, Metallurgical and Chemical Combine -Trepça (hereinafter, the RMHK Trepca).
23. On 13 March 2013 and 20 March 2013, the PAK notified, respectively, the first and second Applicants about the registration of the claim against the RMHK Trepca.
24. On 31 October 2016, the challenged Law on Trepça entered into force.

Summary of facts related with Referral KI22/17

25. The third Applicant claims that they were working until 1999 in the Mine Kishnica and in the Mine Novo Brdo, which are parts of RMHK Trepça.
26. The third Applicant claims that, in June 1999, third parties prevented the regular attendance at their working places and, due to the security situation, they were not able to be reinstated to their working places. They did not receive from the management of the RMHK Trepca neither any notice about the possibility of returning to their working places nor any information about their legal status. They have never been served with the decisions on termination of employment relationship in the Mines of Kishnica and Novo Brdo.
27. The third Applicant further claims that, in 2006, they initiated before the Special Chamber of the Supreme Court proceedings against the KTA and UNMIK administration, where they requested the payment of unpaid salaries, as well as the payment of the corresponding contributions to the pension fund. However, they could not realize their statements of claim due to the moratorium which suspended the implementation of all measures against the property or the enterprises that are a part of the RMHK Trepça.

28. On 08 October 2016, the Assembly adopted the Law on Trepça, which was promulgated, published and entered into force on 31 October 2016.

The Applicant's allegations

Allegations of first and second applicant

29. The allegations of the first and second Applicants are completely identical, and as such will be mentioned together.
30. The first and second Applicants claim that the entry into force of the Law on Trepça violated their right to property.
31. The first and second Applicants request the Court to declare the Law on Trepça incompatible with the Constitution and the ECHR, and to repeal that Law.

Allegations of the third Applicant

32. The third Applicant requests the constitutional compatibility of Articles 1, 2, 3, 4, 5, 6, 14, 15, 16, and 17 of the Law on Trepça, considering that allegedly these Articles carried the ownership transformation in favor of the newly formed company Trepca J.S.C..
33. The third Applicant claims that this ownership transformation transferred only the rights but not the obligations. They support their position on the fact that *"the law does not contain provisions on the legal successor of liabilities"*.
34. The third Applicant further claims that this failure *"places all Trepça creditors, who had claims before the entry into force of this law, into the worst situation possible, because their debtor has been deprived all of a sudden from all assets, without receiving anything as compensation. And, if law is adhered to, then it will receive nothing"*.
35. The third Applicant explains these claims by citing Articles 14, 15, 16 and 17 of the Law on Trepça and consider that these *"provisions deal with such expropriation, consequences, its management and similar topics"*.
36. The third Applicant points out that *"the approved legal solutions, which imply the separation of business units without transferring the obligations and the valid license of Trepça on the newly-founded enterprise, demonstrate to a great extent the need to immediately open the proceedings for the liquidation of Trepça, which clearly has all the obligations and charges of the enterprise, which were created following the entry into force of the Law on Trepça. Given such circumstances, it is evident that only the claims that have been determined as priority claims will be fulfilled during the proceedings for the liquidation of Trepça J.S.C."*
37. The third Applicant requests from Trepca the *"reinstatement to work, payment of salaries earned in the amount of 200 euro per month from the date of its suspension of payments as well as payment of the corresponding contributions"*

to the pension fund in his name, and all of this constitutes the property of the Applicants”.

38. The third Applicant reasons the incompatibility with the Constitution by claiming that Article 53 of the Constitution provided for the interpretation of human rights in accordance with the decisions of the ECtHR and that Article 22 of the Constitution for provided direct application of the ECHR. In addition, the third Applicant refers to a large number of decisions of the ECtHR by which they justify the admissibility of their Referral.
39. Furthermore, the third Applicant considers that, with the adoption of such a law on Trepça, they cannot exercise their rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 46 [Right to Property] and 156 [Refugees and Internally Displaced Persons] of the Constitution and Article 1 of Protocol 1 [Protection of Property] of the ECHR, which is directly applicable in the legal system of Kosovo.
40. The third Applicant requests the Court to find *“that their rights, guaranteed by Article 46 [Right to Property] as read in conjunction with Article 156 (the rights of special groups) and Article 31, par. 2 (the right to fair and impartial trial) of the Constitution and Law No. 05/L-120 on Trepça (Official Gazette No. 36/2016) – is hereby declared UNCONSTITUTIONAL and thereby abrogated as such”.*

Request for interim measure

41. The second and third Applicants request the imposition of interim measure, repeating the already presented allegations and claiming that the creditors issue is not resolved, the law prevents the exercise of human rights, the law does not contain a minimum of justice, the law is not of general interest, this law harms even Trepça itself.
42. Further, they allege *“the existence of an irrevocable damage which endangers the system of the rule of law and its consequences may spread all across the entities related to it”.*
43. Finally, the Applicants consider that *“the requirements provided under Article 116, paragraph 2, of the Constitution and Article 27 of the Law on the Constitutional Court have been met”.* Therefore they propose to the Court to grant the interim measure by suspending *“the application... of the Law on Trepça no. 05/ L- 120 ... until the Court renders decision on compatibility of this Law with the Constitution of Kosovo”.*

Admissibility of the Referrals

44. The Court first examines whether the Referrals have fulfilled the admissibility requirements established in the Constitution, and as further provided in the Law and foreseen in the Rules of Procedure.
45. In this regard, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

1. *The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
2. *The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:*

*(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government'
[...]*

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*

46. The Court also refers to Article 29 [Accuracy of the Referral] of the Law, which provides:

1. A referral pursuant to Article 113, Paragraph 2 of the Constitution, shall be filed by either one fourth (1/4) of the deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo, the Government or the Ombudsperson.

47. In addition, the Court takes into account Rule 36 (1) (a) of the Rules of Procedure, which foresees:

*(1) The Court may consider a referral if:
a) the referral is filed by an authorized party ...*

48. The Court reiterates that Article 113 (2) of the Constitution establishes that only the Assembly, the President of the Republic of Kosovo, Prime Minister and Ombudsperson are authorized to refer to the Constitutional Court the question of the compatibility with the Constitution of laws.

49. The Court notes that the Applicants as individuals are excluded of the exhaustive list of authorized parties established by the Constitution to refer to the Court the matter of the compatibility with the Constitution of laws, including the challenged Law on Trepça itself.

50. The Court reminds that individuals are only authorized parties to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, after having exhausted all legal remedies provided by law. (See Constitutional Court joined cases KIO3/13 and KO28/13, Applicants *Demë Dashi and Others, and Ali Lajçi*, Resolution on Inadmissibility, of 28 June 2013).

51. In fact, Article 113 (7) of the Constitution presupposes individual and direct grievances to approach the Constitutional Court as an instance of last resort for an alleged violation by public authorities of individual rights and freedoms guaranteed by the Constitution.

52. Therefore, the Court considers that the Applicants are not authorized party to refer constitutional matters *in abstract* regarding the constitutional assessment of a Law in order to obtain a remedy in the name of the collective interest. Thus, the Applicants are not authorized parties to request the assessment of the constitutional compatibility of the challenged Law on Trepça.
53. In this regard, the Court reiterates that the Constitution does not provide for an “*action popularis*”, i.e. individuals can not complain in abstract about legislation which have not been applied to them personally through measure of implementation. (See ECtHR case *Dudgeon v. the United Kingdom*, Application No. 7525/76, Decision of 22 October 1981. See also Constitutional Court case KI 117/11, Applicant *Ridvan Hoxha*, Resolution on Inadmissibility of 18 July 2012).
54. The Court reminds that a complaint must be brought by or on behalf of persons who claim to be victims of a violation of constitutional provisions. Such person must be able to show that they were “directly affected” by the measure complained of. (See ECtHR case *Ilhan v. Turkey*, Application No. 22277/93, Judgment of 27 June 2000).
55. Moreover, the Court also reminds that it has already decided that “*the Law No. 05/L-120 on Trepça is constitutional as regards its substance and the procedure followed for its adoption by the Assembly of the Republic of Kosovo*”. (See Constitutional Court case KO 118/16, Applicant *Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Law No. 05/L-120 on Trepça, Resolution on Inadmissibility, of 31 October 2016).
56. Therefore, in accordance with Article 113 (1) and (2) of the Constitution, Article 29 (1) of the Law and Rule 36 (1) (a) of the Rules of Procedure, the Court finds that the Referrals KI20/17, KI21/17 and KI22/17 are inadmissible

The request for interim measure

57. The Court recalls that the Applicants request the Court “*to suspend the application ... of the Law on Trepca No. 05/L- 120 ... until the present Court decides on the compatibility of this law with the Constitution of Kosovo*.”
58. The Applicants base the request on the risk of occurrence of “*irrevocable damage which endangers the system of the rule of law and its consequences may spread all across the entities related to it*”.
59. In order to impose an interim measure, in accordance with Rules 54 and 55, it is required:

Rule 54

[...]

(4) (a) the party requesting interim measures has shown [...] a prima facie case on the merits of the referral;

[...]

Rule 55

[...]

*(5) If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.
[...]*

60. As noted above, the Referrals KI20/17, KI21/17 and KI22/17 are inadmissible because the Applicants are not authorized parties to request the assessment of the constitutional compatibility of the Law on Trepça. Thus, the Applicants are not authorized to request the interim measure either. Accordingly, the Court rejects the request for interim measure.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113 (1) and (2) and 116 (2) of the Constitution, Articles 27 and 29 (1) of the Law and Rule 36 (1) (a), 54 (4), 55 (5) and 56 (b) and (c) of the Rules of Procedure,

DECIDES

- I. TO DECLARE the Referrals KI20/17, KI21/17 and KI22/17 as inadmissible;
- II. TO REJECT the request for interim measures;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Arta Rama-Hajrizi