



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

Prishtina, 5 June 2017  
Ref. No.:RK 1084/17

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI117/16**

Applicants

**Rexhep Lushtaku  
Tafil Meha  
Shefqet Bytyqi  
Bedri Gashi**

**Constitutional review of  
Judgment ARJ No. 18/16 of the Supreme Court of Kosovo,  
of 23 May 2016**

### 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  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Referral was submitted by Rexhep Lushtaku, Tafil Meha, Shefqet Bytyqi and Bedri Gashi, all residing in Prishtina (hereinafter, the Applicants).

## **Challenged decision**

2. The Applicants challenge Judgment ARJ No. 18/16 of the Supreme Court of Kosovo, of 23 May 2016, which rejected as ungrounded the extraordinary review of the court decision filed against Judgment AA. No. 45/2016 of the Court of Appeals of Kosovo, of 02 March 2016.
3. The challenged decision was served on the Applicants on 2 June 2016.
4. In addition, the Applicants request the constitutional review of Decision A/02/126/2014 of the Independent Oversight Board for the Civil Service of Kosovo (hereinafter, IOB), of 2 May 2014, and the Decision No. 123/14 of the Commission for Resolution of Disputes and Complaints of the Kosovo Security Council (hereinafter, the KSC Complaints Commission), of 19 May 2014.

## **Subject matter**

5. The subject matter is the constitutional review of the challenged decision, which allegedly has violated the Applicants' rights guaranteed by Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 49 [Right to Work and Exercise Profession], Article 54 [Judicial Protection of Rights] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) as well as Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter, the ECHR).

## **Legal basis**

6. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

## **Proceedings before the Constitutional Court**

7. On 26 September 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
8. On 28 September 2016, the Applicants submitted an additional document to the Court.
9. On 19 October 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërzhaliu Krasniqi.
10. On 9 November 2016, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.

11. On 4 April 2016, the Review Panel, after having considered the report of the Judge Rapporteur, recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

12. On an uncertain date, the Applicants established an employment relationship with the Kosovo Security Council (hereinafter, the KSC) as “Information Collecting and Processing Officers.”
13. On 9 February, 10 March, 4 June, 6 July, 8 October 2010, and 11 January 2011, the Applicants filed a request with the KSC, asking for material compensation for the work performed overtime.
14. On 25 November 2011, the KSC (Decision 271/2011) rejected the Applicants’ request, reasoning that the Applicants do not work overtime; they work in accordance with the requirements and the specifics foreseen by their employment contract which, among others, provides that they should show readiness to work in rotation, which also means to work the night shift.
15. On 29 November 2011, the Applicants filed a complaint with the Secretariat of KSC Complaints Commission, on the grounds of non-compensation for overtime work, erroneous determination of facts and erroneous application of the substantive law.
16. On 5 December 2011, the KSC Secretariat issued a general Decision 237/2011, whereby it decided that officials of the KSC Secretariat and the Situation Center will be paid retroactively for the additional work and work duties from April until November 2011.
17. On 12 January 2012, the Applicants filed an appeal with the IOB, because the KSC Complaints Commission did not render any Decision (kept silent) regarding the complaint of the Applicants of 29 November 2011. The Applicants requested complete compensation of unpaid overtime work (duty shift hours), since a part of them was not paid based on Decision 237/2011 of the KSC Complaints Commission, of 5 December 2011.
18. On 16 January 2012, the KSC Complaints Commission (Decision No. 08/12) rejected the Applicants’ complaint. The Decision reasoned that “1) *The sublegal acts, which should regulate the payment of the duty shift hours worked by the civil servants are still being drafted.* 2) *After calculating the normal working hours, considering the work schedule as a basis, the officers in question do not have more than 40 hours per week, therefore they do not do overtime work.* 3) *There are no funds [...].*”
19. On 21 February 2012, the Director of the Situation Centre of the KSC sent a letter to the Ministry of Finance, requesting the allocation of the additional budget.
20. On 29 February 2012, the Ministry of Finance sent an additional letter to the Director of the Situation Center of the KSC informing that it is not possible to

allocate additional budget without previous consent of the Assembly. In addition, the letter reads: *“Being unable to allocate additional budget, I recommend you to consider the opportunity of fulfillment of your request through the transfer of funds from the category of salaries and allowances from other programs of PMO, pursuant to Law No. 04/L-079 on the Budget of the Republic of Kosovo and the Law on Management of Public Finance”*.

21. On 3 April 2012, the IOB (Decision No. 02/05/2012) rejected the Applicants' complaint as ungrounded and upheld the Decision No. 08 /12 of the KSC Complaints Commission, of 16 January, reasoning that the KSC Complaints Commission acted in accordance with Law No. 04/L-079 on Budget, due to lack of budget.
22. On 25 April 2012, the Applicants filed a claim with the Supreme Court, requesting the annulment of Decision No. 02/05/2012 of IOB, on the grounds of violation of the procedural rules, erroneous determination of factual situation and violation of legality.
23. On 3 May 2012, the IOB submitted to the Supreme Court of Kosovo a response to the claim.
24. The Applicants' claim filed with the Supreme Court was referred to the Basic Court in Prishtina, Department for Administrative Matters (hereinafter, the Basic Court). In fact, after the Law on Courts entered into force on 1 January 2013, the Basic Court became competent to address the Applicants' allegations in the administrative proceedings.
25. On 30 December 2013, the Applicants expanded the claim with the Basic Court to compensation of salaries (the duty shifts) during 2013.
26. On 10 March 2014, the Basic Court (Judgment A. no. 546/12) approved the Applicants' claim and annulled Decision No. 02/05/2012 of IOB, of 3 April 2012. The Judgment reasons that *“the sued body – IOBSCCK, when rendering the decision, should not have dealt with Decision no. 08/12, of 16 January 2012, rendered by the KSC Committee for Disputes and Complaints, because such decision was rendered out of the time limit, and after the claimants had filed an appeal with the sued body”*. In addition, the Judgment emphasizes that the IOB did not sufficiently reason the Applicants' allegations.
27. On 2 May 2014, the IOB (Decision A/02/126/2014) annulled Decision 08/12 of the KSC Complaints Commission, of 16 January 2012, obliged the KSC Secretariat to review again the Applicants' complaint of 29 November 2011, and obliged KSC to implement this decision within the time limit of 15 days.
28. On 19 May 2014, the KSC (Decision No. 123/2014) rejected the Applicants' complaint of 29 November 2011. The decision states that the duty shifts are compensated to Applicants with days off, whereas they do not work overtime. The decision further reads: *“The Kosovo Security Council Secretariat requested from the Ministry of Finance additional funds [...] for compensation of working hours during the duty shifts for the staff of the*

- Situation Center, where compensation is made with payment, not by days off, as this causes difficulties in the work progress, but this request was rejected”.*
29. On 6 June 2014, the Applicants filed a claim with the Basic Court against Decision A/02/126/2014 of IOB, of 2 May 2014, on the grounds of violation of the procedural law, erroneous determination of factual situation and violation of legality.
  30. On 31 August 2015, the IOB filed with the Basic Court a response to the claim, requesting that the Applicants’ claim be rejected as inadmissible as it was filed out of time.
  31. On 7 December 2015, the Applicants requested the IOB to declare absolutely invalid act the Decision 123/14 of KSC, of 19 May 2014.
  32. On 14 December 2015, the Basic Court (Judgment A. no. 853/2014) rejected the claim as ungrounded, *“because this court assessed that when reconsidering, the sued body- the IOBCSK, considered all remarks made in the above mentioned Judgment of the Basic Court, that based on correctly determined facts, the factual situation was determined correctly and as a result of this determined situation, in the evidentiary proceedings in the main hearing it follows that the substantive law was not violated to the detriment of the claimants”.*
  33. On 17 December 2015, the IOB notified the Applicants that their request was filed out of the time limit provided by the law.
  34. On 18 January 2016, the Applicants filed an appeal with the Court of Appeals against Judgment of the Basic Court, of 14 December 2015.
  35. On 2 March 2016, the Court of Appeals (Judgment AA. no. 45/2016) rejected the appeal as ungrounded and upheld the Judgment of the Basic Court, of 14 December 2015. The Judgment considered that the factual situation was correctly determined and that the first instance judgment is clear and comprehensible.
  36. On 20 April 2016, the Applicants filed with the Chief State Prosecutor a proposal for the request for protection of legality against Judgment A. no. 853/2014 of the Basic Court, of 14 December 2015, and Judgment AA. No. 45/2016 of the Court of Appeals, of 2 March 2016.
  37. On 20 April 2016, the Applicants filed with the Supreme Court a request for extraordinary review against Judgment AA. No. 45/2016, of the Court of Appeal of Kosovo, of 2 March 2016.
  38. On 27 April 2016, the Office of Chief State Prosecutor (Notification KMLA. no. 2/16) notified the Applicants that there is no sufficient legal basis for filing the request for protection of legality.
  39. On 23 May 2016, the Supreme Court of Kosovo (Judgment ARJ. nr. 18/2016) rejected as ungrounded the request for extraordinary review, reasoning that, *“in the case at hand, we are not dealing with an administrative act issued in*



*administrative proceedings at the second instance, therefore this Court did not deal with the possible violations of the substantive law [...] According to the assessment of this court, the challenged judgment of the second instance is clear and intelligible”.*

### **Applicant’s allegations**

40. The Applicants claim that the decisions of the regular courts violated their constitutional rights guaranteed by Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 49 [Right to Work and Exercise Profession], Article 54 [Judicial Protection of Rights] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.
41. The Applicants allege that *“our right has been violated because we have been injured by the above mentioned decisions, which denied our right to damage compensation, and the realization of the right to payment of the duty shifts, night shifts, work during official holidays and the realization of allowances on basic salary for specific working conditions”.*
42. The Applicants also allege that *“the failure of the Court to provide any answer regarding the compensation of the damage presents violation of the right to be heard and the right to a reasoned decision as integral part of the right to fair and impartial trial”.*
43. The Applicants further allege that Decision A/02/126/2014 of the IOB, of 2 May 2014, is arbitrary, because it is not based on facts and evidence presented in the appeal and that it contradicts the legal provisions. The Applicants emphasize that *“Decision A/02/126/2014 of the IOBCSK, dated 02.05.2014, is arbitrary because it is not based on the law and is discriminatory, it is contradictory to how the IOBCSK has reviewed the matters in similar cases”.*
44. The Applicants emphasize that the Government of Kosovo rejected the Applicants’ request for allowance on basic salary for specific working conditions, while another institution (Department of Forensic Medicine) which filed the same request, had its request approved. The Applicants claim that as a result of non-approval of the request, the Government of Kosovo violated Article 24 [Equality Before the Law] of the Constitution.
45. The Applicants conclude, by requesting the Court *“[...] to realize the right to compensation of damage, and realization of the right to payment of work during the duty shifts, night shifts, work during weekends [...]”.*

### **Admissibility of the Referral**

46. The Court first examines whether the admissibility requirements laid down in the Constitution and as further provided by the Law and foreseen by Rules of Procedure have been met.

47. In this respect, the Court refers to paragraph 1 and 7 of 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.*
- (...)
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.*
48. However, the Court also refers to Article 48 of the Law, which provides that:
- “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”.*
49. In that connection, the Court further refers to Rule 36 of the Rules of Procedure, which foresees:
- (1) *The Court may consider a referral if*
    - (d) *the referral is prima facie justified or not manifestly ill-founded.*
  - (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*  
[...]
    - (b) *the presented facts do not in any way justify the allegation of violation of the constitutional rights.*
50. In the present case, the Court considers that the Applicants are authorized parties, have exhausted all legal remedies available and filed the Referral within the prescribed deadline. However, the Court should further assess if the requirements provided by Article 48 of the Law and foreseen by Rule 36 of the Rules of Procedure have been met.
51. The Court recalls that, in addition to the request for constitutional review of Judgment ARJ. No. 18/2016 of the Supreme Court, of 23 May 2016, the Applicants also request the constitutional review of Decision A/02/126/2014 of the IOB, of 2 May 2014, and Decision No. 123/14 of the KSC Complaints Commission, of 19 May 2014.
52. The Applicants allege that these decisions violated their rights guaranteed by the Constitution, while rejecting the request for compensation of damage and the payment of the work during the night shifts, due to erroneous determination of facts and violation of legality.
53. The Applicants alleged before the Supreme Court a violation of the substantive and procedural law, and erroneous determination of the factual situation. The

Court notes that the Judgment of the Supreme Court addressed and decided the abovementioned ground of appeal, which have also been raised before the first and second-instance courts. Therefore, the Judgment of the Supreme Court is the final decision regarding the contested matter.

54. The Court recalls that the Applicants allege that the challenged Judgment of the Supreme Court violated the rights guaranteed by the Constitution, namely the right to fair and impartial trial, to effective legal remedy and to judicial protection.
55. The Court begins by analyzing the Applicants' allegations of violation of the right to fair and impartial trial, to effective legal remedy, and to judicial protection.

**(1) Violation of right to fair and impartial trial, to effective legal remedy and to judicial protection of rights**

56. In this respect, the Court refers to Article 31 of the Constitution, which establishes:

*“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law”.*

57. In addition, the Court also refers to Article 6.1 of the ECHR, which establishes:

*“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.*

58. The Court recalls that the Applicants allege before the Constitutional Court that the regular courts decisions *“denied our right to damage compensation, and the realization of the right to payment of the duty shifts, night shifts, work during official holidays and the realization of allowances on basic salary for specific working conditions”.*
59. The Court notes that Applicants filed request for extraordinary review *“on the grounds of violation of the substantive law and violation of the procedural provisions”.*
60. In this regard, the Court refers to the Judgment of the Supreme Court which concluded that the challenged Judgment of the Court of Appeal does not contain essential violations of the legal provisions.
61. In fact, the Supreme Court determined that *“the legal stance of the first-instance court is approved by this Court as regular and entirely based on law because the appealed Judgment does not contain substantial violation of the*



*Law on Administrative Conflicts, violations which are noted ex-officio by the second-instance court [...] By assessing the legality of the Decision on rejection of the appeal of the claimants by the respondent, the first-instance court referred to the provisions of Law 02/L-28 on Administrative Procedure, respectively, Article 93 which defines the consequences of an absolutely invalid act”.*

62. Furthermore, the Supreme Court reviewed the allegation on violations of the procedural provisions. In this respect, the Supreme Court considered the alleged violation as ungrounded, *“because the court considered the claim, it initially sent the claim to the representative of the respondent for response to the claim, then it scheduled the main hearing, it presented sufficient evidence which means that during the assessment, the first-instance court did not violate the provisions of the LAC”.*
63. The Supreme Court further considered that *“the first-instance court upon the consideration of the claim of the claimants presented sufficient evidence which confirm that the allegations of the claimants in the claim are ungrounded because they are contrary to the factual situation”.*
64. The Court recalls that the Applicants allege that *“the failure of the court to provide any answer regarding compensation of the damage presents violation of the right to be heard and the right to a reasoned decision, as an integral part of the right to fair and impartial trial”.*
65. The Court considers that the Supreme Court, not only upheld the reasons given in the reasoning of the lower instance judgments, but it also addressed the substantial issues regarding the allegation of *“violation of the substantive and procedural law”.*
66. In that respect, the Court notes that the Supreme Court assessed the evidence in its entirety, by analyzing the facts, and considering that *“the first-instance court, having administered the evidence, found that the challenged decision of the respondent, during the reconsideration, was rendered in compliance with the remarks provided in Judgment A. no. 546/12 of the Basic Court, of 10 March 2014, and that the responding body has correctly determined the factual situation when finding that the decision of the Security Council Committee for the Resolution of Disputes and Complaints was an absolutely invalid act, because the second-instance administrative body, when deciding on the complaint of the complainants, rendered it in contradiction with the provisions of Article 92, item d), of the Law on the Administrative Procedure”.*
67. The Court reiterates that, in accordance with the ECtHR case law, the right to a reasoned decision encompasses a complex of obligations for the court judgments, namely, to provide the reasons on which the decision is based, to demonstrate to the parties that they have been heard, to provide with the opportunity to appeal the decision, to provide sufficient clarity of the grounds on which the decision is rendered.
68. Although a regular court has a certain margin of appreciation when choosing arguments and admitting evidence, Article 6 (1) does not require a detailed

answer to each and every argument provided to the court during the conduct of the proceedings. See ECtHR cases *Suominen v. Finland*, Application No. 37801/97, 24 July 2003, para 36; *Van de Hurk v. the Netherlands*, Application No. 16034/90, 19 April 1994, para 61; *Perez v. France*, Application No. 47287/99, 12 April 2004, para 81; *Ruiz Torija v. Spain*, Application No 18390/91, 09 December 1994, para 29; *Hiro Balani v. Spain*, Application No. 18064/91, 9 December 1994, para 27.

69. In addition, the Court recalls that the Applicants allege that the Decision A/02/126/2014 of the IOB of 2 May 2014 is arbitrary, because they did not rightly ascertain the state of facts and it violated the legal provisions. The Court notes that the Basic court, in its Judgment A.nr.853/2014 of 14 December 2015, responded to this claim and moreover upheld the Decision A/02/126/2014 of the IOB of 2 May 2014. The Basic Court noted that *“the statement of claim of the claimants was not approved as grounded because this Court assessed that upon the case of re consideration the respondent authority, IOBCSK, considered all remarks made by the above mentioned Judgment of the Basic Court, by the correctly confirmed facts, the factual situation was determined correctly and as a consequence of this determined situation, in the procedure of examination of evidence in the main hearing it follows that the substantive law was not violated in detriment of the claimants.* That reasoning was upheld by the Supreme Court in its challenged Judgement.
70. The Court considers that the Supreme Court addressed all the grounds of the appeal filed in the request for revision of the Applicants, after all proceedings through the KSC Complaints Commission, the IOB, the Basic Court, the Court of Appeals and the Supreme Court. Thus, the Applicants had sufficient access to the regular courts and ample opportunity to present evidence and arguments on their disputed matter. The evidence was analyzed and the arguments were assessed as abovementioned.
71. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. See ECtHR case *García Ruiz v. Spain*, Application No. 30544/96, 21 January 1999, para. 28.
72. The Court notes that the Applicants presented before the Constitutional Court in substance the same grounds of appeal they presented in the last instance. Moreover, the Court notes that the Applicants request the Court *“to realize the right to compensation of damage, and realization of the right to payment of work during the duty shifts, night shifts, work during weekends”*.
73. The Constitutional Court recalls that it is not a fact-finding Court and thus the correct and complete determination of the factual situation and application of law is within the full jurisdiction of regular courts. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court". See ECtHR case *Akdivar v. Turkey*, Application No. 21893/93, 16 September 1996, para. 65; Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

74. The Court considers that the Applicants do not agree with the conclusion of the regular courts outcome. However, the mere fact that the Applicants disagree with the outcome of the proceedings conducted by the regular courts cannot of itself raise an arguable claim for breach of Article 31 [Right to Fair and Impartial Trial] guaranteed by the Constitution. See *mutatis mutandis* ECtHR case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, Judgment of 26 July 2005.
75. In addition, the Court considers that the Applicants have not proved and substantiated on a constitutional basis that the proceedings before the regular courts, including the Supreme Court, were unfair or arbitrary or that their rights and freedoms were violated. The facts of the case do not reveal that the regular courts have acted in breach of procedural safeguards established by the Constitution.
76. From the above, the Court concludes that the Applicants' right to fair and impartial trial was respected in general during the proceedings, and more specifically, they had free access to the courts, they were given reasoned judgments in various stages of the proceedings. The Court further finds that accordingly, their rights, to effective legal remedies and to judicial protection, were guaranteed.
77. Therefore, the Applicants' allegation for violation of the right to fair and impartial trial, to effective legal remedies and to judicial protection are manifestly ill-founded on a constitutional basis.

## **(2) Violation of the right to work and equality before the Law**

78. The Court further recalls that the Applicants allege that the decisions of the regular courts violated their right to work and that they have been discriminated against.
79. In this respect, the Court refers to Article 49 [Right to Work and Exercise Profession] of the Constitution which establishes:
1. *The right to work is guaranteed.*
  2. *Every person is free to choose his/her profession and occupation.*
80. The Court also refers to Article 24 [Equality Before the Law], which establishes:
1. *All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
  2. *No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*

81. The Court notes from the facts and considerations above that the conducted proceedings and the rendered decisions were not in violation of Article 24 of the Constitution. Thus, the Court considers that the Applicants' allegations in regard to violation of Article 24 of the Constitution [Equality Before the Law] are also ill-founded on a constitutional basis.
82. In that connection, the Court recalls the case law of ECtHR which establishes that discrimination "*is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*". See ECtHR cases *Willis v. the United Kingdom*, Application No. 25379/02, 20 May 2008, paragraph 48; *Bekos and Koutropoulos v. Greece*, Application No. 15250/02, 13 December 2005, paragraph 63; and *D.H. and others v. Czech Republic*, Application No 57325/00, 13 November 2007, paragraph 44.
83. The Court further notes that the Applicants do not show that they were victims of an act of a competent authority in respect of loss or termination of the employment relationship, nor that they are prohibited by a decision of an authority to work and exercise profession to which they consider they are entitled to. Thus the Court finds ungrounded the Applicants' allegations on violation of Article 49 [Right to Work and Exercise Profession] of the Constitution.
84. Furthermore, the Court considers that the Applicants did not prove and substantiate a violation of Articles of the Chapters II and III of the Constitution. Those Articles do not have an independent effect because their effect is only in relation to "*the enjoyment of rights and freedoms*". Therefore, the Court concludes that, without those violations, the Applicants' allegations on violation of Article 102 [General Principles] is out of consideration.
85. Before the foregoing, the Court considers that the Applicants' Referral has not met the admissibility requirements established in the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure.
86. Therefore, the Referral is manifestly ill-founded on constitutional basis and is inadmissible, in accordance with Rule 36 (1) d) and (2) (d) of the Rules of Procedure

## FOR THESE REASONS

The Constitutional Court, pursuant Article 113.7 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) and 56 of the Rules of Procedure, on 4 April 2017, unanimously

## DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.


**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi