



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

Prishtina, on 23 October 2017
Ref. No.: RK 1143/17

RESOLUTION ON INADMISSILITY

in

Cases Nos. KI37/17 and KI52/17

Applicants

Tihomir Mikarić
Olga Janičjević
Shemsije Sheholli

**Constitutional Review of
Judgment Pml.Kzz 236/2016 of the Supreme Court
of 11 January 2017**

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

Applicants

1. The Referral KI37/17 was submitted by Tihomir Mikarić, with residence in Laplje Selo, municipality of Gračanica and Olga Janičjević, with residence in Prishtina; the Referral KI52/17 was submitted Shemsije Sheholli, with residence in Prishtina (hereinafter, the Applicants).

Challenged decision

2. The Applicants challenge Judgment Pml. Kzz 236/16 of the Supreme Court of 11 January 2017, in connection with Judgment PAKR 158/15 of the Court of Appeals of 5 April 2016 and Judgment K.no. 272/13 of the Basic Court in Prizren of 9 September 2014.

Subject matter

3. The subject matter of the Referrals is the constitutional review of the challenged Judgment, which allegedly violated the Applicants' rights as guaranteed by Article 3 [Equality Before the Law], Article 24 [Equality Before the Law], Article 31 (2) [Right to Fair and Impartial Trial], Article 33 (1) (4) [The Principle of Legality and Proportionality in Criminal Cases], Article 54 [Judicial Protection of Rights], Article 107 [Immunity] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), in connection with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention of Human Rights (hereinafter, the ECHR).
4. The Applicant Shemsije Sheholli requested the Court to hold a hearing

Legal basis

5. The Referrals are based on Article 113 (7) of the Constitution, Article 47 and 48 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

6. On 3 April 2017, the Applicants Tihomir Mikarić and Olga Janičijević submitted their Referral KI 37/17 to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 7 April 2017, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Bekim (presiding), Selvete Gërzhaliu-Krasnqi and Gresa Caka-Nimani.
8. On 21 April 2017, the Applicant Shemsije Sheholli submitted her Referral KI 52/17 to the Court.
9. On 24 April 2017, the President of the Court ordered the joinder of the Referrals under Rule 37 (1) of the Rules of Procedure.
10. On 25 May 2017, the Court notified the Applicants about the registration and joinder of their referrals and sent a copy of the referrals to the Supreme Court.
11. On 12 June 2017, the Applicant Shemsije Sheholli submitted additional documents and requested the Court to hold a hearing and to enable her to participate in that hearing.

12. On 7 September 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

13. On 27 July 2012, the Special Prosecution of the Republic of Kosovo filed indictment PPS 253/09 against the Applicants.
14. On 9 September 2014, the Basic Court in Prizren (Judgment P. No. 272/13) found guilty:
 - (i) the Applicant Tihomir Mikarić because in between 2006 and 2007, as a judge in the then Municipal Court in Prishtina, rendered illegal decisions in cases nos. 1908/03; 342/06; and 1918/06;
 - (ii) (ii) the Applicant Olga Janičijević because in between 2006 and 2007, as a judge in the then Municipal Court in Prishtina, rendered illegal decisions in cases nos. 1314/07; 53/06; 3/06; 1849/06; 1147/06; 3521/04; 1415/05; 1738/07; and,
 - (iii) (iii) the Applicant Shemsije Sheholli because in between 2006 and 2007, as a judge in the then Municipal Court in Prishtina, rendered illegal decision in case no. 2333/05.
15. The Basic Court found the Applicants guilty due to having committed the criminal offence of “Issuing Unlawful Judicial Decisions” as provided for by Article 346 of the Provisional Criminal Code of Kosovo UNMIK/REG/2003/25 (hereinafter, PCCK) of 6 July 2003. The Basic Court reasoned that the Applicants have rendered decisions pertinent to property claims against Socially Owned Enterprises in contravention with the applicable law which provided that the Special Chamber of the Supreme Court has primary jurisdiction to resolve such claims. The Basic Court further added that the applicants have rendered those decisions for the purposes of personal material gain and for the material gain of third persons.
16. The Applicant Tihomir Mikarić was sentenced to 1 (one) year of conditional imprisonment which shall not be executed under the condition not to commit another criminal offence within a period of 2 (two) years. The Applicant Olga Janičijević was sentenced to 18 (eighteen) months of conditional imprisonment which shall not be executed under the condition not to commit another criminal offence within a period of 2 (two) years. The Applicant Shemsije Sheholli was sentenced to 8 (eight) months of conditional imprisonment which shall not be executed under the condition not to commit another criminal offence within a period of 2 (two) years.
17. The Basic Court, under Article 54 [Accessory Punishments] and Article 57 [Prohibition on Exercising a Profession, Activity or Duty] of the PCCK, sentenced the Applicants with the accessory punishment of prohibition of profession, activity or duty for a period of 2 (two) years.

18. The Applicants filed with the Court of Appeals an appeal alleging essential violation of the provisions of the criminal procedure, erroneous and incomplete determination of the factual situation, violation of the criminal law and decision on criminal sanction.
19. On 5 April 2016, the Court of Appeals (Judgment PAKR 158/15) partially granted the Applicants' appeal, insofar as their intent to obtain unlawful material benefit could not be proven beyond a reasonable doubt and the imposed accessory punishment was too vague; rejected as ungrounded the remainder of the appeal; and upheld their conviction.
20. The Applicants filed with the Supreme Court a request for protection of legality, claiming violations of their fundamental human rights and freedoms, namely consisting of allegations about selective justice, form and content of judgments, disproportionality in criminal cases, establishment of criminal intent, establishment of fact, forged evidence, immunity of judges and wrongful imposition of accessory punishment.
21. On 11 January 2017, the Supreme Court (Judgment Pml.Kzz 236/2016) rejected as ungrounded the Applicants' request for protection of legality, because it concluded that "*all allegations against the form and content of the judgment of the Court of Appeals to be unfounded (...)*".

Applicants' allegations

22. The Applicants claim violations of Article 3 [Equality Before the Law]; Article 24 [Equality Before the Law]; § 2 of Article 31 [Right to Fair and Impartial Trial]; §§ (1) and (4) of Article 33 [The Principle of Legality and Proportionality in Criminal Cases]; Article 54 [Judicial Protection of Rights]; Article 107 [Immunity] of the Constitution, in connection with § 1 of Article 6 (Right to a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR).
23. The Applicants Tihomir Mikarić and Olga Janičijević claim that the proceedings were arbitrary. In fact, they allege that "*first instance Judgment (...) is arbitrary, hypothetical or incomprehensible. In paragraph 267 of the judgment is provided an explanation "the panel has reviewed UNMIK Regulation 2002/13, in particular Article 4 and found that provisions of the same are clear. However, the panel did not read the regulation"*".
24. The Applicants Tihomir Mikarić and Olga Janičijević also claim that the judgments of the courts show a deficient reasoning. In fact, they allege that "*first Instance Basic Court in Prizren has not provided sufficient reasons for its judgment. It did not explain clearly and unequivocally my guilt, neither my intent, as an essential element of the offense "Rendering unlawful judicial decisions", foreseen by Article 346 PCCK"*".
25. Moreover, the Applicants Tihomir Mikarić and Olga Janičijević claim a violation of Article 31 (2) of the Constitution. In fact, they allege that "*first instance Judgment was rendered beyond the reasonable timeframe of 180 days, which*

is the time required for rendering of a court decision. SPRK on 27.07.2012 filed the indictment PPS 253 of 19.07.2012, and the judgment was rendered on 09.09.2014”.

26. The Applicants Tihomir Mikarić and Olga Janičijević further claim about the reasons set out in the Judgment of the Court of Appeals. In fact, they allege that *“the second instance (...) did not provide valid reasons as determined that I allegedly rendered disputed judgments with the intention to damage the DP PIK “Kosovo-Export” (...). The second instance Judgment also cannot meet the standards of a well reasoned decision, by which would be respected my right to a reasoned decision, as it is guaranteed by the Constitution of the Republic of Kosovo and the European Convention on Human Rights”.*
27. In addition, the Applicants Tihomir Mikarić and Olga Janičijević claim a violation of Article 33 (1) and (4) of the Constitution. In fact, they allege that *“the Supreme Court (...) justified the unlawful and unjust judgments of lower courts by inventing “specific intent”, which is different from the basic forms of the intentions laid down in Article 15 of the PCCK, by doing so directly violated Article 33 paragraph 1 and paragraph 4 of the Constitution of the Republic of Kosovo (...)”.*
28. Finally, the Applicants Tihomir Mikarić and Olga Janičijević request the Court: (i) to confirm violation of Article 31 (2) of the Constitution, in conjunction with Article 6 (1) of the ECHR; (ii) to confirm violation Article 33 (1) and (4) of the

33. Moreover, the Applicant Shemsije Sheholli alleges that she is a victim of discrimination by the courts because: (i) in the proceedings before the trial court, evidence was “manipulated” and documents were “concealed” to her detriment; (ii) her intent to commit a criminal offence and her purpose for material gain were never established, and hence, in absence of such elements, there is no criminal offence; and that (iii) the accessory punishment, namely prohibition to exercise her profession as a judge is “unlawful”, “unfair” and “denigrating” to her as a judge and that that punishment “seriously” violates Article 107 of the Constitution.
34. Finally, the Applicant Shemsije Sheholli requests the Court to declare null and void all the Judgments of the regular courts.

Admissibility of the Referral

35. The Court first examines whether the Applicants have fulfilled the admissibility requirements established by the Constitution, provided by the Law and further specified by the Rules of Procedure.
36. In that respect, the Court refers to §§ 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.

37. The Court also refers to Articles 49 [Deadlines] of the Law, which provides:

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.

38. In this respect, the Court notes that the Applicants are individuals who allege violations by the regular courts of their rights guaranteed by the Constitution; they have submitted their Referrals within the prescribed deadline and they have exhausted all legal remedies available to them.
39. However, the Court further refers to Article 48 [Accuracy of the Referral] of the Law which provides:

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.

40. The Court takes into account Rule 36 (1) (d) and (2) (d), 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 manifestly ill-founded when it is satisfied that:

(...)

(d) the Applicant does not sufficiently substantiate his claim”.

41. Thus the Court determines that the Applicants are authorized parties, they filed their Referrals in due time and they have exhausted all legal remedies. However, the Applicants have not sufficiently substantiated their claims as it will be further explained.

42. The Court recalls that the Applicants claim violations of Article 3, 24, 31 (2), Article 33 (1) and (4), 54, and 107 of the Constitution, in connection Article 6 (1) of the ECHR.

43. The Court is mindful of Article 24 [Equality Before the Law] of the Constitution, 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.

(...)

44. Article 31 [Right to Fair and Impartial Trial] of the Constitution establishes:

1. Everyone shall be guaranteed equal protection of rights in the proceedings before the 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.

45. In addition, Article 6 [Right to a fair trial] of the ECHR establishes:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

46. Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution, which establishes that:

1. No one shall be charged or punished for any act which did not constitute a penal offense under law at the time it was committed, except acts that at the time they were committed constituted genocide, war crimes or crimes against humanity according to international law.”

[...]

4. Punishments shall be administered in accordance with the law in force at the time a criminal act was committed.

47. Articles 54 [Judicial Protection of Rights] of the Constitution establishes:

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

48. Article 107 [Immunity] of the Constitution establishes:

1. Judges, including lay judges, shall be immune from prosecution, civil lawsuit and dismissal for actions taken, decisions made or options expressed that are within the scope of their responsibilities as judges.”

49. The Court notes at the outset that the Applicants challenge the same Judgment of the Supreme Court; however, several of the allegations are raised by more than one of the Applicants. Thus the Court will examine them together or one by one in as much as they are interrelated or separated.

50. In this respect, the Court recalls that the Applicants allege violations of their fundamental human rights and freedoms, namely arguing about selective justice, form and content of judgments, disproportionality in criminal cases, establishment of criminal intent, establishment of facts, forged evidence, deprivation of immunity of judges and wrongful imposition of accessory punishment.

51. The Court considers that these allegations and arguments were already the grounds on which the Applicants requested the protection of legality.

52. In fact, the Court notes that the Applicant Tihomir Mikaric requested protection of legality arguing that *“the judgments are in violation of Article 346 [Issuing Unlawful Judicial Decisions] of the PCK and in substantial violation of the provisions of criminal procedure according to Article 384 (1.3) of the CPC”*.

53. The Court also notes that the Applicant Olga Janicijevic requested protection of legality arguing that *“the judgment of the Court of Appeals is in violation of Article 346 of the PCK because the reasoning does not mention any evidence that proves that she intended to cause damage”*.

54. The Court further notes that the Applicant Shemsije Sheholli requested protection of legality, arguing that *“the judgments are in violation of the provisions of criminal procedure, criminal law and the Constitution”*. In relation with that alleged violation of the Constitution, the Applicant Shemsije Sheholli argued that *“the judgments violate the constitutionally protected principle of immunity for judges pursuant to Article 107 of the Constitution as they deprive*

a judge from the right to independently render judgments based on applicable law”.

55. The Court considers that the allegations and arguments brought before the Court are related with errors of facts and law allegedly committed not only by the Supreme Court but also by the Court of Appeals, District Court and Municipal Court. The allegations and arguments taken by the Applicants are the same in substance as the ones presented before the Supreme Court. It appears that the Applicants are coming before the Constitutional Court as it would be a “fourth instance” court.
56. However, the Court reiterates that it is not its task to deal with errors of law allegedly committed by a regular court (legality), unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which have led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “fourth instance”, which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See European Court on Human Rights [ECtHR] case *García Ruiz v. Spain*, Application No. 30544/96, 21 January 1999, § 28; and see *mutatis mutandis* Constitutional Court case No. KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, of 17 August 2016, § 40).
57. The Court further emphasizes that, as a general rule, the establishment of the facts and the interpretation and application of law is a matter solely for the regular instances whose findings and conclusions in this regard are binding on the Constitutional Court. However, where a decision of a regular court is clearly arbitrary, the Court can and must call it into question. (See Constitutional Court case No. KI63/16, *Ibidem*, § 45).
58. Moreover, the Court notes that the Supreme Court thoroughly analyzed the allegations and arguments contained in the Applicants’ request for protection of legality and gave justified answers. The Supreme Court specifically analyzed and decided on the arguments of establishment of intent, “selective justice”, the session held on 3 September 2014, forged evidence, immunity, form and content of the judgments and imposition of accessory punishments.
59. In fact, as to the Applicants’ allegation on selective justice, the Supreme Court noted that “*the arguments in this regard are extremely vague as they are not substantiated by any legal ground*”. Furthermore, the Supreme Court considered that “*it is not a violation of either criminal procedure or criminal material law to acquit only some of the defendants based on a different assessment of the established facts*”. Finally, the Supreme Court “*has not found that (...) the law intentionally was applied selectively. Because of this, the allegations are unfounded*”.
60. As to the allegation of the Applicants about the form and content of judgments of the courts of lower instance, the Supreme Court noted that “*the Court of Appeals affirmed the conclusions already exhaustively elaborated by the District Court*”. The Supreme Court considered that, “*in situations where the Court of Appeals*

concur with reasons already given in the first instance, the standard for its reasoning is set lower. The Panel does not agree that the reasoning is insufficient or that the enacting clause is unclear or incomprehensible". Finally, the Supreme Court found *"all allegations against the form and content of the judgment of the Court of Appeals to be unfounded in these parts"*.

61. As to the allegation of the Applicants on the exercise of proportionality by the courts of lower instance, the Supreme Court noted that *"the criminal offence of Issuing Unlawful Judicial Decisions is pursuant to Article 346 of the PCKK punishable by imprisonment of six months to five years"*. The Supreme Court considered that *"all terms of imprisonment were decided within this scale"*. Finally, the Supreme Court found that *"the allegation that the courts exceeded their authority is therefore unfounded"*.
62. As to the allegation of the Applicants that the courts of lower instance never established their criminal intent, the Supreme Court noted that *the intent prescribed in Article 346 of the PCKK is one of the specific elements of the criminal offence of Issuing Unlawful Judicial Decision. It is a specific intent and as such it differs from the basic forms of intents prescribed in Article 15 of the PCKK. Article 15 of the PCKK defines the two types of basic intent – direct and eventual – that applies to each criminal offence within the PCKK*". The Supreme Court considered that *"the factual determination in relation to the specific subjective element as defined in Article 346 of the PCKK does not differ from the factual determination in relation to other elements"*. Finally, the Supreme Court found that *"the specific intent can therefore be proved in many ways, including through logical inferences that can be drawn from other pieces of evidence, including circumstantial evidence"*.
63. As to the request of the Applicants Tihomir Mikarić that the Supreme Court must examine the video and audio recordings, the Supreme Court reminded that the procedure of the request for protection of legality *"is governed by Articles 418 and 432–441 of the CPC"*. The Supreme Court considered that *"none of these articles include a procedural possibility for the Supreme Court to take new evidence or examine video and audio recordings from the District Court's sessions"*. Finally, the Supreme Court found that *"Tihomir Mikarić's request is therefore rejected"*.
64. As to the allegation of the Applicants Tihomir Mikarić and Olga Janičijević that the first instance judgment was rendered beyond the reasonable deadline of one hundred and eighty (180) days, and thus, resulting in violation of paragraph 2 of Article 31 of the Constitution, the Constitutional Court notes that there is nothing in their Referral suggesting that this allegation was raised by the Applicants during the course of regular proceedings. This allegation is being raised for the first time before this Court. However, the Court, in accordance with the principle of subsidiarity, cannot assess this question without it having been raised and assessed in the regular proceedings beforehand. (See Constitutional Court case KI89/15, Applicant *Fatmir Koci*, Resolution on Inadmissibility, of 22 March 2016, § 35).
65. As to the allegation of the Applicant Shemsije Sheholli on forged evidence, the Supreme Court considered that *"the allegation in this regard is vague as it is not*

substantiated by any legal ground or example". In addition, the Supreme Court noted that it "cannot assess the District Court's establishment of facts as Article 432 (2) of the CPC prohibits arguments that – directly or indirectly – challenge the factual determination". Finally, the Supreme Court concluded that it "did not find any indication of that the courts forged evidence, these allegations are unfounded".

66. As to the allegation of the Applicant Shemsije Sheholli about the breach of her immunity as a judge, the Supreme Court reminded that "Article 107 (2) of the Constitution prescribes that judges shall not enjoy immunity and may be removed from office if they have committed an intentional violation of the law". The Supreme Court noted that, "in this case, the defendants have been found guilty of intentionally violating the law". Finally, the Supreme Court concluded that "for that reason, the Constitution does not exclude criminal responsibility. The allegation that the Constitution was violated is therefore unfounded".
67. As to the allegation of the Applicant Shemsije Sheholli about wrongful imposition of accessory punishment, the Supreme Court reminded that the accessory punishment "can according to Article 57 of the PCKK be imposed on a perpetrator if he/she has abused his/her position, activity or duty in order to commit a criminal offence or if there is reason to expect that the exercise of such profession, activity or duty can be misused to commit a criminal offence". The Supreme Court noted that "the provision does not make a difference between defendants who are judges and other defendants". The Supreme Court considered that, "in this case, the defendants have clearly abused their positions in order to commit the criminal offences at hand". Finally, the Supreme Court concluded that "the allegation that the imposition of accessory punishments is unlawful is therefore unfounded".
68. Before the foregoing considerations, the Court notes that the Applicants had the benefit of the conduct of the proceedings based on adversarial principle; they were able to submit the arguments they considered relevant to their case at the various stages of those proceedings; they were given the opportunity to challenge effectively the arguments and evidence presented by the prosecutor; all the arguments relevant for the resolution of their case were heard and reviewed by the regular courts; the factual and legal reasons against the challenged judgments were presented in detail; and, in accordance with the circumstances of the case, viewed in their entirety, the proceedings were fair. (See, for example, ECtHR case *Garcia Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, § 29; and see, *mutatis mutandis*, Constitutional Court case No. KI42/16, Applicant *Valdet Sutaj*, Resolution on Inadmissibility, of 7 November 2016, § 40).
69. In this respect, the Court reiterates that requirement of "fairness" as guaranteed by Article 31 of the Constitution in connection with Article 6 of the Convention covers proceedings as a whole, and the question whether a person has had a "fair" trial is looked at by cumulative analysis of all the stages, not merely of a particular incident or procedural defect; as a result, defects at one level may be put right at a later stage. (See, for example, ECtHR case *Monnell and Morris v. the United Kingdom*, Application No. 9562/81; 9818/82, Judgment 2 March 1987, §§55-70).

70. The Court considers that the Applicants do not agree with the Judgment of the Supreme Court, namely with the way the law was interpreted and applied by the courts. In this respect, the Court refers to the case-law of the ECtHR which held that, “*in consequence of the principle that laws must be of general application, the wording of statutes is not always precise. One of the standard techniques of regulation by rules is to use general categorizations as opposed to exhaustive lists. That means that many laws are inevitably couched in terms which, to a greater or lesser extent are vague, and their interpretation and application depend on practice. Consequently, in any system of law, however clearly drafted a legal provision may be, including a criminal law provision, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain.* (See *mutatis mutandis* ECtHR case *Scoppola v. Italy*, Application No. 10249/03, Judgment of 17 December 2009, §§ 100-101).
71. Furthermore, it is not up to the Court to speculate as to the establishment of the facts, the interpretation and application of the criminal and criminal procedural law by the Supreme Court and by the other courts during the course of the criminal proceedings.
72. The Court reiterates that it is the master of characterization to be given in law to the facts of the case, it does not consider itself bound by the characterization given by the Applicants or other parties in the proceedings. (See ECtHR case *Guerra and Others v. Italy*, Application No. 116/1996/735/932, Judgment of 19 February 1998, § 44).
73. Moreover, the Applicants have not showed and substantiated any violation which might lead the Court to conclude that the Supreme Court or the regular courts acted in an arbitrary or unreasonable manner in establishing the facts or interpreting the law. (See, for example, ECtHR case *Alimuçaj v. Albania*, Application No. 20134/05, Judgment of 7 February 2012, § 176).
74. In addition, the Court considers that the Applicants’ disagreement with the outcome of their cases cannot of itself raise an arguable claim of a breach of their constitutional rights. (See, *mutatis mutandis*, Constitutional Court Case No. KI63/16, *Ibidem*, § 46).
75. Based on the foregoing considerations, the Court concludes that the Applicants have not presented any facts to justify their allegations for a breach of their fundamental rights and freedoms as guaranteed by the Constitution; nor have they substantiated those allegations as required by Article 48 of the Law.
76. The Court finds that the referrals are manifestly ill-founded on a constitutional basis and must thus be declared inadmissible, as established by Article 113 (7) of the Constitution, provided for by Article 48 of the Law and foreseen by Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

The Applicant's Shemsije Sheholli request to hold an oral hearing

77. The Court recalls that the Applicant Shemsije Sheholli requested to hold a hearing and to enable her to participate in that hearing.
78. In that respect, the Court refers to Article 20 of the Law, which provides:
- 1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.*
 - 2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files.*
79. The Court notes that no reasons were invoked by the Applicant supporting her request.
80. Thus the Court considers that the documents contained in the Referral are sufficient to decide this case as per wording of Article 20 paragraph 2 of the Law. (See, *mutatis mutandis*, Constitutional Court case No. KI34/17 Applicant *Valdete Daka*, Judgment of 12 June 2017, §§ 108-110).
81. Therefore, the Applicant's request to hold a hearing is rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law, and Rule 36 (1) (d) and (2) (d), and 56 (b) of the Rules of Procedure, on 7 September 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