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

Prishtina, on 15 November 2016
Ref. No.:RK1004/16

RESOLUTION ON INAMDISSIBILITY

in

Cases No. KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16; KI64/16

Applicants

Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku, and Sami Lushtaku

Constitutional review of Decision PML-KZZ . no. 242/2015 of the Supreme Court of 26 November 2015

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 Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicants

1. The Referral were submitted by Arben Gjukaj, represented by Ramë Gashi, lawyer; Hysni Hoxha, represented by Sahit Bibaj, lawyer; Driton Pruthi, represented by Bajram Tmavaj, lawyer; Milazim Lushtaku, represented by Law Firm Sejdiu and Qerkini; Esat Tahiri, represented by Mentor Neziri, lawyer; Azem Duraku, represented by Afrim Salihu, lawyer; and Sami Lushtaku represented by Arianit Koci, lawyer (hereinafter, the Applicants).

Challenged decisions

2. The Applicants challenge Decision PML-KZZ. no. 242/2015 of the Supreme Court of the Republic of Kosovo (hereinafter, the Supreme Court) of 26 November 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Articles 29 [Right to Liberty and Security], 30 [Right of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution.

4. The Applicants Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku and Azem Duraku also request the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely *"to suspend the proceeding in the criminal case No. PKR 23/15, with the Basic Court in Prishtina"*

Legal basis

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

Proceedings before the Court

6. On 22 December 2015, Applicant Arben Gjukaj filed the Referral KI150/15.

7. On 30 December 2015, Applicant Hysni Hoxha filed the Referral KI161/15.

8. On 31 December 2015, Applicant Driton Pruthi filed the Referral KI162/15.

9. On 21 January 2016, Applicant Milazim Lushtaku filed the Referral KI14/16.

10. On 27 January 2016, the President of the Court appointed Judge Ivan Cukalovic as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

11. On 28 January 2016, Applicant Esat Tahiri filed the Referral KI19/16.

12. On 7 April 2016, Applicant Azem Duraku filed the Referral KI60/16.

13. On 13 April 2016, Applicant Sami Lushtaku filed the Referral KI64/16.

14. On 25 March 2016, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referrals to the Supreme Court.

15. On 13 April 2016, in accordance with Rule 37.1 of the Rules of Procedure, the President of the Court ordered the joinder of Referrals KI161/15, KI162/15, KI14/16, KI19/16, KI60/16 and KI64/16 to the Referral KI150/15. By this order

it was decided that the Judge Rapporteur and the composition of the Review Panel in all the referrals are the same, as it was decided in the Referral KI150/15.

16. On 26 April 2016, the Court informed the Applicants and the Supreme Court of Kosovo on the joinder of the Referrals.

17. On 26 September 2016, the President of the Court appointed Judge Altay Suroy as Presiding Judge on the Review Panel, replacing Judge Robert Carolan.

Summary of facts

18. On 5 October 2012, the Special Prosecutor of the case (hereinafter: SP) issued a Ruling on Initiation of the Investigations against the Applicants Driton Pruthi, Hysni Hoxha, Azem Duraku, Milazim Lushtaku, and Esat Tahiri, for having allegedly committed several criminal offences *(Abuse of Official Position or Authority in violation of Article 339 paragraphs 1, 2 and 3 of the Criminal Code of Kosovo).*

19. On 15 March 2013, the SP rendered decision on expansion of investigations to include the Applicant Arben Gjukaj *(Abuse of Official Position or Authority, in violation of Article 422 paragraphs 1, 2 and 3 of the CCK).* The SP also expanded the investigations against the Applicants Milazim Lushtaku, Driton Pruthi, and Esat Tahiri, for inclusion of other criminal offences *(Fraud and Falsifying Documents, entering into harmful contracts in violation of Article 192 paragraphs 1 and 2 of the CCK),* whereas regarding the Applicants Driton Pruthi, Hysni Hoxha and Azem Duraku, re-qualified the alleged criminal offence with a similar criminal offence.

20. On 12 November 2013, SP submitted again the proposal for extension of investigations. This document defined all alleged criminal offences, for which the defendants have been investigated.

21. On 10 April 2014, SP submitted the proposal for extension of investigations also against the Applicants Sami Lushtaku and Esat Tahiri (*Incitement to Abuse Official Position or Authority, in violation of Article 422 paragraphs 1 and 2 of the CCK).*

22. On 20 November 2014, the SP filed a motion to extend the period of investigations which expired on 4 October 2014.

23. On 16 December 2014, the Pre-trial Judge retroactively extended the period of investigations until 16 January 2015 against the Applicants Milazim Lushtaku, Driton Pruthi, Hysni Hoxha, Azem Duraku and Esat Tahiri, while regarding the Applicants Arben Gjukaj and Sami Lushtaku, he emphasized that the SP request was premature.

24. The Applicants Hysni Hoxha and Azem Duraku filed appeals against the decision on extension of investigations.

25. On 17 March 2015, the Court of Appeal approved the appeals of the Applicants Hysni Hoxha and Azem Duraku, stating that the investigations expired on 5 October 2014.

26. On 16 January 2015, the Prosecutor filed the Indictment PPS 97/12.

27. On 10 February 2015, the initial hearing was held. The Applicants challenged the evidence and requested the dismissal of the indictment.

28. On 11 June 2015, the Basic Court in Prishtina (Decision Pkr. No. 18/15) rejected the objections of the Applicants regarding the admissibility of evidence, thus confirming Indictment PPS 97/12 of 16 January 2015.

29. On 16, 17 and 22 June 2016, the Applicants filed appeals with the Court of Appeal in Prishtina.

30. On 5 August 2015, the Court of Appeal (Decision PN. 365/15) partly approved the appeals of the Applicants' representatives regarding the deadline for filing the indictment; rejected as ungrounded the objections of the Applicants concerning the admissibility of evidence; modified the decision of the first instance court regarding Indictment PPS 97/12 of 16 January 2015, holding that it was filed after the deadline provided by Article 159 (1) of CCK. In conclusion, the abovementioned court terminated the criminal proceedings against the Applicants with a justification that the Indictment PPS 97/12 of 16 January 2015 was out of time.

31. On 9 September 2015, the EULEX SP filed an appeal with the Supreme Court, claiming what follows.

> *"The challenged Decision violates the right guaranteed to the party by the Constitution of the Republic of Kosovo and also the substantial right guaranteed to the party by the CPC, and also the right guaranteed to the party by another Law of Kosovo, more concretely, Article 109, paragraph 1 of the Constitution of the Republic of Kosovo, Article 4, paragraph 2 and Article 7, paragraph 1, sub paragraphs 1.7 and 1.8 of the Law on State Prosecutor, and Article 49 of the CPC (Article 415, paragraph 1, sub paragraphs 1.1, 1.2 and 1.3 of the CPC), and the procedural law with the purpose of guaranteeing the right under Article 415, paragraph 1, subparagraphs 1.1, 1.2 and 1.3 of the CPC (Article 415, paragraph 1, sub paragraph 1.4 of the CPC). More concretely, the challenged Decision does not contain the reasoning on decisive matter, according to Article 404, paragraph 1 of the CPC (Article 384, Paragraph 1, sub paragraph 1.12 of the CPC), the Court of Appeals erroneously applied the provisions of Article 68, Article 158, paragraph 3, and Article 253, paragraph 1 of the CPC, they did not manage to consider Article 4, paragraph 1 and Article 240 paragraph 1 of the CPC, and the challenged Decision is substantially contrary to the provisions and criminal proceedings (Article 384, paragraph 2, sub paragraph 1 of the CPC)".*

32. On 26 November 2015, the Supreme Court (Decision PML. KZZ 242/15) approved the appeal of the SP and modified the decision of the Court of Appeal.

33. The Supreme Court reasoned as it follows.

> *"It is clear and unfortunately the time limit for filing the Indictment is not determined specifically in CPC. No provision of the CPC shows exactly any circumstance in which the Indictment is considered as "out of date", or for rejecting the appeal on this basis. The Panel, initially considered Article 68 of the CPC which determines in details the four different stages of the criminal procedure: the investigation stage, the indictment and plea stage, the main trial stage and the legal remedy stage. By this clear difference of the stages of the criminal procedures in CPC, the Panel finds that the purpose of the legislative is clear and the filing of the appeal enters in the second state of the criminal procedure (the indictment and plea stage) and not in the first stage (the investigation stage). This point of view was strengthened by Article 159 of the CPC. This Article is very clear regarding the time limits of the investigative stage, and it does not include any provision which determines that the Indictment shall be filed within the allowed time limit. Then, the Panel considered Article 240 of the CPC, by which determines the actions which are in disposal of the Prosecutor after the investigation is finished. Paragraph 1 determines the procedure before the Court based on the Indictment filed by the State Prosecutor, and paragraph 2, determines that the State Prosecutor issued a Decision for the termination of the investigation. Both situations, expressively refer to the end of the investigation, and the Panel thinks that the meaning of the Article is that the filling of the Indictment is not part of the investigation stage, and therefore it is not a subject of the time limits determined by Article 159 of the CPC. Also it is logical that the State Prosecutor will not be able to decide of what actions he should undertake – to file an Indictment or to issue a Decision. Also, it is clear that the Indictments are long and detailed documents, which take a lot of time to be prepared correctly and completely. The Panel by majority of votes ascertains that there is not any time limit for filing the Indictment, "Out of date Indictment" is not determined by CPC. The State Prosecutor is limited only to the prescription of this present criminal case. However, the State Prosecutor is clearly instructed to file the Indictment as soon as the investigation stage ends, since that the danger of violating the right to fair trial within the reasonable time limit becomes greater by time passing. Further on, this Court on the occasion of deciding on the merits of the criminal charge; on the occasion of deciding on the punishment will always consider the time limit of the criminal procedure".*

Applicant's allegations

34. The Applicants claim a *"violation of their individual rights, guaranteed by Articles 29, 30 and 31 of the Constitution of the Republic of Kosovo, Article 6 of the European Convention".*

35. The Applicants allege that the Supreme Court deprived them from the right to fair and impartial trial, because *"the Criminal Procedure Code has stipulated preclusive deadlines, with the effect of losing the right of filing an indictment if the Prosecutor does not file an indictment within a period of (2) years, counting from the day of the Decision on initiation of the investigations".*

36. The Applicants also allege that *"the challenged Decision does not contain the reasoning on decisive matter, according to Article 404, paragraph 1 of the CPC (Article 384, Paragraph 1, sub paragraph 1.12 of the CPC)".*

37. The Applicants further allege that the Supreme Court decided *"in violation of the rule of law and the principle of legal security, because if the stances and the decision-making standards of the Supreme Court are not taken into account, as in the present case, then the parties cannot know how to rely on the Constitution, law and case law".*

38. Furthermore, the Applicant Milazim Lushtaku alleges that principle *"in dubio pro reo"* was violated in his case, because *"The presumption of innocence presents the constituent part of a fair trial. This principle places the burden of proof on the prosecutor, and conclusively guarantees the charged person the benefit of the doubt. This means that the prosecutor holds the burden of proof for all elements of the offence against all the defendants and the court is obliged to interpret the factual or legal doubts in favor of these defendants. In light of this interpretation, we shall always have violations of the principle "in dubio pro reo" each time the courts interpret the law in favor of the case of the prosecution".*

39. The applicant Azem Duraku requests his identity not to be disclosed.

Assessment of admissibility of the Referral

40. The Court first examines whether the Applicants have fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.

41. In this respect, the Court refers to paragraphs 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.*

42. The Court also 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.*

43. The Court further takes into account Rule 36 [Admissibility Criteria] (1) (d) and (2) (b) and (d) 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 a violation of the constitutional rights, or
(...)
(d) the Applicant does not sufficiently substantiate his claim.

44. The Court recalls that the Applicants claims that the challenged decision allegedly violated thier rights to liberty and security, their rights of Accused and their right to fair and impartial trial, each of them guaranteed by the Constitution.

45. The Court is mindful of the invoked constitutional provisions of Articles 29, 30 and 31 of the Constitution, as it follows.

46. Article 29 [Right to Liberty and Security]

1. Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:
(1) pursuant to a sentence of imprisonment for committing a criminal act;
(2) for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law;
(3) for the purpose of educational supervision of a minor or for the purpose of bringing the minor before a competent institution in accordance with a lawful order;
(4) for the purpose of medical supervision of a person who because of disease represents a danger to society;
(5) for illegal entry into the Republic of Kosovo or pursuant to a lawful order of expulsion or extradition.
2. Everyone who is deprived of liberty shall be promptly informed, in a language he/she understands, of the reasons of deprivation. The written notice on the reasons of deprivation shall be provided as soon as possible. Everyone who is deprived of liberty without a court order shall be brought within forty-eight (48) hours before a judge who decides on her/his detention or release not later than forty-eight (48) hours from the moment the detained person is brought before the court. Everyone who is arrested shall be entitled to trial within a reasonable time and to release pending

trial, unless the judge concludes that the person is a danger to the community or presents a substantial risk of fleeing before trial.
3. Everyone who is deprived of liberty shall be promptly informed of his/her right not to make any statements, right to defense counsel of her/his choosing, and the right to promptly communicate with a person of his/her choosing.
4. Everyone who is deprived of liberty by arrest or detention enjoys the right to use legal remedies to challenge the lawfulness of the arrest or detention. The case shall be speedily decided by a court and release shall be ordered if the arrest or detention is determined to be unlawful.
5. Everyone who has been detained or arrested in contradiction with the provisions of this article has a right to compensation in a manner provided by law.
6. An individual who is sentenced has the right to challenge the conditions of detention in a manner provided by law.

47. Article 30 [Rights of the Accused]

Everyone charged with a criminal offense shall enjoy the following minimum rights:
(1) to be promptly informed, in a language that she/he understands, of the nature and cause of the accusation against him/her;
(2) to be promptly informed of her/his rights according to law;
(3) to have adequate time, facilities and remedies for the preparation of his/her defense;
(4) to have free assistance of an interpreter if she/he cannot understand or speak the language used in court;
(5) to have assistance of legal counsel of his/her choosing, to freely communicate with counsel and if she/he does not have sufficient means, to be provided free counsel;
(6) to not be forced to testify against oneself or admit one's guilt.

48. Article 31 [Right to Fair and Impartial Trial]

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.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.
4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.
5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.

6. Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.
7. Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.

49. The Court recalls that the main argument of the Applicants is whether filing the indictment two years after the starting of investigations is or not in conformity with the criminal law. The Applicants consider that the challenged decision violates "*Article 109, paragraph 1 of the Constitution of the Republic of Kosovo, Article 4, paragraph 2 and Article 7, paragraph 1, sub paragraphs 1.7 and 1.8 of the Law on State Prosecutor, and Article 49 of the CPC (Article 415, paragraph 1, sub paragraphs 1.1, 1.2 and 1.3 of the CPC), and the procedural law with the purpose of guaranteeing the right under Article 415, paragraph 1, subparagraphs 1.1, 1.2 and 1.3 of the CPC (Article 415, paragraph 1, sub paragraph 1.4 of the CPC)*".

50. In fact, the Applicants complain that the Supreme Court erroneously interpreted the law with regard to a time-limit to file an indictment and considers that the Supreme Court should have construed the relevant legal provisions in a different way.

51. The Court notes that the Supreme Court took into due account the Judgments of the Basic Court and of the Court of Appeal. Then, the Supreme Court started analyzing the question from the observation that *"no provision of the CPC shows exactly any circumstance in which the Indictment is considered as "out of date", or for rejecting the appeal on this basis"*. The Supreme Court, after discussing the interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code, considered that *"the filling of the Indictment (...) is not a subject of the time limits determined by Article 159 of the CPC"*. Finally, the Supreme Court concluded that *"there is not any time limit for filing the Indictment, "Out of date Indictment" is not determined by CPC"*.

52. The Court considers that the Applicants base their claim on erroneous interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code made by the Supreme Court in relation to the SP having filed the indictment two years after the starting of investigations. That procedural argument pertains to the domain of legality and as such does not fall under the jurisdiction of the Constitutional Court and thus it cannot be reviewed by the Court. On the other hand, the Court underlines that "failure to abide by the time-limit prescribed by domestic law does not in itself contravene Article 6 § 1 of the Convention" (See ECtHR, *Mitkus v. Latvia*, Application no. 7259/03, Judgment 2 October 2012, para 88).

53. Moreover in the case at issue, the Court, in accordance with its case law, considers that it is not reviewing the Law under dispute but only the Decision of the Supreme Court. With regard to the contesting of the constitutionality of the law, the Court shall intervene only when matters of this nature have been raised in a legal manner by authorized parties as provided by the Constitution.

54. In this respect, the Court emphasizes 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 *García Ruiz v. Spain*, [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I; Case No. KI72/14, Applicant *Besa Qirezi,* Judgment of 4 February 2015, para.65).

55. The Court considers that the Applicants have neither presented facts which justify his allegation of a violation of theier constitutional right to liberty and security, theier rights of Accused and their right to fair and impartial trial, nor he has proved the alleged violation of his invoked constitutional rights.

56. In fact, the Court observes that the Applicants do not refer to any relevant and pertinent facts or situations in relation to be *deprived of liberty,* which would fall under Article 29 of the Constitution, in conjunction with Article 5 of the ECHR; in relation to a criminal charge, which could justify the enjoyment of the minimum rights, as established by Article 30 of the Constitution, in conjunction with Article 6 of the ECHR; and in relation to a *public hearing,* as established by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

57. The Court considers that the observation is in conformity with the ECtHR jurisprudence, which held that the overall purpose of Article 5 of the ECHR is to ensure that no one should be dispossessed of his liberty in an arbitrary fashion *(Assanidze v. Georgia,* Application no. 71503/01, Judgment 8 April 2004*)*. The ECtHR jurisprudence also held that Article 6 of the ECHR begins to apply when a criminal investigation has reached the point where the applicant has been charged with a criminal offense (*Zaprianov v. Bulgaria*, Application no. 41171/98, Judgment 30 September 2004). In addition, the ECtHR jurisprudence specifically considered that the guarantee provided by Article 6 of the ECHR requires that a hearing takes place and by implication that there is an oral hearing.

58. In addition, the Court recalls that the Applicant Milazim Lushtaku alleged a violation of the principle *"in dubio pro reo"*, because *"the presumption of innocence presents the constituent part of a fair trial"*.

59. The Court reminds that the principle *"in dubio pro reo"* is somehow the reverse of the beyond reasonable doubt criterion of adjudication, meaning that, where there is no evidence in the trial beyond reasonable doubt, the principle *"in dubio pro reo"* comes into play.

60. In fact, in accordance with the structure and dynamic of the criminal proceedings, the Prosecutor started the criminal investigations based on an alleged reasonable suspicion of a criminal offense existence; then the Prosecutor allegedly indicted based on a grounded suspicion of a criminal

offense having been committed. The principle *"in dubio pro reo"* only comes into play in the trial phase, as it is linked with the global assessment of the evidence presented during the trial. If no evidence beyond reasonable doubt, the conviction is not be allowed, then *in dubio pro reo* operates and acquittal will follow. The criminal proceedings have not reached this phase yet. Therefore, the allegation is premature, displaced and ungrounded.

61. Moreover, the Court recalls its case law, namely in Cases No. KI10/15 and KI12/15, Applicants Shpresim Uka and Bekim Syla, Resolution on Inadmissibility, of 7 July 2016. In that case, the Court held that *"it is beyond its jurisdiction to assess the quality of the conclusions of the courts regarding the assessment of the evidence, unless it is manifestly arbitrary. The Constitutional Court shall also not interfere in the way the courts have admitted the evidence as evidentiary material and will not interfere with the discretion of the court on assessing its probative value. It is the exclusive role of the regular courts, even when the statements of the witnesses (...) appear to be in conflict. (See European Court of Human Rights, Doorson v. Netherlands, Judgment of 6 March 1996, published in Report No. 1996-II, paragraph 78)".*

62. Thus, the Court considers that the Applicants have not succeeded to show and prove that the proceedings before the Supreme Court were unfair or tainted by arbitrariness or that his rights and freedoms protected by the Constitution have been infringed by the alleged erroneous interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code. The Court emphasizes that interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code is a matter of legality. No constitutional matter has been substantiated and proved by the Applicants.

63. The Court reiterates that, as a general rule, the interpretation 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 *Sisojeva and Others v. Latvia,* [GC], application no. 60654/00, Judgment of 15 January 2007, para. 89).

64. In addition, the Court notes that the Applicants disagree with the outcome of theier case; however, the disagreement cannot of itself raise an arguable claim of a breach of Articles 29 [Right to Liberty and Security], 30 [Right of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution. (See, for example, Constitutional Court Case No. KI125/11, *Shaban Gojnovci*, Resolution on Inadmissibility of 28 may 2012, paragraph 28).

65. Therefore, the Court finds that the Applicant's Referral does not meet the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.

66. Consequently, the Referral is manifestly ill-founded on constitutional basis and, pursuant to Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, is inadmissible.

Request for Interim Measure

67. The Court recalls that the Applicants Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku and Azem Duraku also request the Court to render a decision on the imposition of an interim measure namely "*to suspend the proceeding in the criminal case No. PKR 23/15, with the Basic Court in Prishtina*".

68. The Court has just concluded that the Applicants Referral is manifestly ill-founded on a constitutional basis and is inadmissible.

69. Therefore, in accordance with Article 27 (1) of the Law and Rule 55 (4) of the Rules of Procedure, the request for interim measure is rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 27 and 48 of the Law, and Rules 36 (1) (d), 36 (2) (b) and (d), and 56 (2) of the Rules of Procedure, on 15 November 2016, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measure;

III. TO REJECT as ungrounded applicant's request for not disclosing identity;

IV. TO NOTIFY this Decision to the Parties;

V. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

VI. TO DECLARE this Decision effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Arta Rama-Hajrizi