



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 4 July 2016  
Ref. No.:RK962/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI51/15 and KI52/15**

Applicant

**Zoran Stanišić**

**Constitutional review of Judgment Rev. No. 159/2011 of the Supreme  
Court of Kosovo, of 9 July 2013, and  
Decision PN. No. 371/2013, of the Court of Appeal of Kosovo,  
of 20 May 2013**

### **CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

Composed of

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

#### **Applicant**

1. The Referrals KI51/15 and KI52/15 were submitted by Mr. Zoran Stanišić, resident in Belgrade (hereinafter, the Applicant).

## **Challenged decision**

2. In his Referral KI51/15, the Applicant challenges Judgment Rev. No. 159/2011 of the Supreme Court of Kosovo, of 9 July 2013, which rejected as ungrounded the revision of the Applicant filed against Judgment Gz. No. 393/2009 of the District Court in Prishtina, of 18 November 2010.
3. The challenged Judgment of the Supreme Court of Kosovo was served on the Applicant on 26 December 2014.
4. In his Referral KI52/15, the Applicant challenges Decision PN. No. 371/2013 of the Court of Appeal of Kosovo (hereinafter, the Court of Appeal), of 20 May 2013.
5. It is assumed that challenged Judgment of the Court of Appeal was also served on the Applicant on 26 December 2014.

## **Subject matter**

6. The subject matter of the Referral KI51/15 is the constitutional review of the challenged Judgment of the Supreme Court of Kosovo, which allegedly has violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 46 [Protection Property] and Article 54 [Judicial Protection of Rights] of the Constitution; Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, the ECHR), and Article 1 of Protocol 1 of the ECHR.
7. The subject matter of the Referral KI52/15 is the constitutional review of the challenged Decision of the Court of Appeal, which allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights] of the Constitution; and Article 6 [Right to a Fair Trial] and 13 [Right to an Effective Remedy] of the ECHR.

## **Legal basis**

8. The Referrals are 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**

9. On 23 April 2015, the Applicant submitted the Referrals KI51/15 and KI52/15 to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

10. On 2 June 2015, in the Referral KI51/15, the President of the Court appointed Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
11. On 16 June 2015, the Court informed the Applicant about the registration of the Referral KI51/15 and sent a copy of it to the Supreme Court.
12. On 18 June 2015, the Court informed the Applicant about the registration of Referral KI52/15 and sent a copy of it to the Court of Appeal.
13. On 3 September 2015, in the Referral KI52/15, the Court requested the Basic Court in Prishtina to submit the return paper, confirming the date upon which the Applicant has been served with the challenged Decision of the Court of Appeal.
14. On 18 September 2015, in the Referral KI52/15, the Basic Court in Prishtina informed that they do not know when the Applicant received the challenged decision.
15. On 14 October 2015, in the Referral KI51/15, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur, replacing Judge Kadri Kryeziu, whose mandate as a constitutional court judge ended on 26 June 2015.
16. On 14 October 2015, the President ordered that the Referral KI52/15 be joined to the Referral KI51/15, and that the Judge Rapporteur and the Review Panel for the two referrals (KI51/15 and KI52/15) are the same as decided in the Referral KI51/15.
17. On 9 December 2015, the Court notified the Applicant about the joinder of the Referrals KI51/15 and KI52/15 and informed the Supreme Court and the Court of Appeal on the joinder of the Referrals.
18. On 14 December 2015, in the Referral KI51/15, the Court requested to the Basic Court to submit the return papers, confirming the date upon which the Applicant has been served with the Judgment of the Supreme Court.
19. On 29 December 2015, in regard to Referral KI51/15, the Basic Court informed that the Applicant has received the challenged decision on 26 December 2014.
20. On 20 May 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**

### **Referral KI51/15**

21. On 31 December 2001, the Applicant requested the Housing and Property Claims Commission to return the possession of a house and business premise,

located at str. "Nazim Gafurri" no. 51, in Pristina, which had been occupied since June 1999.

22. On 27 June 2003, the Housing and Property Claims Commission (Decision DS302754) ordered the person who occupied the apartment to return the apartment to the Applicant and also ordered to vacate it.
23. On 15 July 2004, the Applicant requested to the Municipal Court in Prishtina compensation from the Mission of the United Nations in Kosovo (hereinafter, the UNMIK), from Municipality of Prishtina and from the Government of Kosovo for the damage caused to his property.
24. On 23 November 2006, the Municipal Court (Decision P. no. 2553/04) rejected the claim as inadmissible, because UNMIK, including its property, funds and assets, shall be immune from any legal proceedings.
25. On 19 December 2006, the Applicant filed an appeal with the District Court in Prishtina, due to *"Essential violation of the contested procedure provisions; Erroneous and incomplete ascertainment of factual situation; and Erroneous application of substantive law"*.
26. On an unspecified date, the District Court remanded the case to the Municipal Court for retrial.
27. On 22 January 2007, the Municipal Court (Decision P. no. 2553/04) again rejected as inadmissible the claim against the Municipality of Prishtina and the Government of Kosovo, because *"both the first and the second Respondent lack the passive legitimacy"*.
28. On an unspecified date, the Applicant filed an appeal with the District Court.
29. On 11 September 2008, the District Court (Judgment. GjQ. Ac. 519/07) annulled the Decision of the Municipal Court and remanded the case for retrial.
30. On 12 January 2009, the Municipal Court (Judgment P. no. 1728/08) again rejected the Applicant's claim regarding the compensation of damage by UNMIK, because *"the personal funds and property of UNMIK are excluded from any trial, namely, they are excluded from the courts' jurisdiction in Kosovo"*. The Municipal Court also rejected the Applicant's request to oblige the Municipality of Prishtina and the Government of Kosovo to pay compensation for the damage caused to his property, *"due to the lack of passive legitimacy"*.
31. On 19 February 2009, the Applicant filed an appeal with the District Court due to: *"Essential violation of contested procedure provisions; Erroneous and incomplete ascertainment of the factual situation, and Erroneous application of substantive law"*.
32. On 19 November 2010, the District Court (Judgment GZ. No. 393/09) rejected as ungrounded the Applicant's appeal and upheld the Judgment of the

Municipal Court, reasoning that *“the first instance court has fairly acted when it rejected the claimants’ statement of claim, especially when it is taken into account that the respondents lack passive legitimacy and that in the present case UNMIK was excluded from the court jurisdiction in Kosovo”*.

33. Moreover, the District Court concluded that *“the first instance court has given full and clear reasons for all the facts which are decisive for a fair adjudication of this contested matter”*.
34. The Applicant states that the Judgment (GZ. No. 393/09) of the District Court has never been served on him or on his authorized representative. However, on 26 August 2011, after numerous urgencies, the Applicant obtained a copy of the judgment of the District Court from the Supreme Court of Kosovo.
35. Then, the Applicant could see that, on 01 December 2010, the judgment of the District Court *“was allegedly handed over to the attorney-at-law Miro Delević from Mitrovica, whom the Applicant neither know, nor engage him as attorney-at-law on their behalf”*.
36. The Applicant also could see that *“Attorney-at-law M. Delević, without consulting the Applicant, filed a revision on his behalf (extraordinary legal remedy)”*, which was registered in the Supreme Court under number Rev. no. 159/2011.
37. On 17 April 2012, the Applicant *“submitted to the Supreme Court the supplementation to revision”*, due to *“essential violations of the contested procedure and the erroneous application of the substantive law”*.
38. On 9 July 2013, the Supreme Court (Judgment Rev. no. 159/2011) rejected as ungrounded the revision, considering that *“both Judgments of the lower instance courts contain sufficient reasons for the decisive facts, valid for the fair trial of this legal case, which this Court accepts as well”* and also found that *“the first instance court has correctly applied the substantive law”*.
39. The Applicant says that this judgment *“was returned AGAIN to the Attorney-at-law Miro Delević”*, even though, in the Judgment of the Supreme Court, *“it is said that our authorized attorney-at-law is Vladimir Mojsilović”*. He further states that *“he personally got this decision from the Basic Court in Prishtina, on 26 December 2014”*.

#### **Referral KI52/15**

40. On 29 May 2006, the Applicant filed with the Office of the District Public Prosecutor a criminal report against a third party, alleging that in 1999 the third party kidnapped his mother, by keeping her locked inside her apartment and threatening the Applicant with his mother's life, if he would not sign a contract in the amount of a certain debt.
41. On 15 February 2007, the Office of the District Public Prosecutor rejected (Decision PC 118/07) the criminal report, stating that the period of 2 (two) years for the prosecution of this criminal offense has elapsed.



42. On 12 January 2009, the Applicant filed an indictment as a subsidiary claimant with the District Court against the third party.
43. On 6 March 2009, the confirming judge of the District Court handed over the case file to the Municipal Court for further proceedings.
44. On 21 June 2010, the Applicant, as a subsidiary claimant, presented to the Municipal Court a submission, stating that the actions of the third party contain the elements of the criminal offense of kidnapping under paragraph 1 of Article 159 of the Provisional Criminal Code of Kosovo (hereinafter, PCCK).
45. On 22 November 2010, the Municipal Court (Decision PO. No. 96/09) rejected the indictment filed by the Applicant and suspended the criminal proceedings against the third party due to the absolute statutory limitation of the criminal prosecution.
46. On 7 February 2011, the Applicant filed an appeal with the Criminal Panel of the Municipal Court, claiming that the Municipal Court delayed the confirmation of the indictment in order to achieve the absolute statutory limitation.
47. On 22 February 2011, the Criminal Panel of the Municipal Court (Decision Kv. No. 45/11) rejected the Applicant's appeal as ungrounded.
48. The Panel of the Municipal Court in Prishtina reasoned that the confirming judge acted correctly when rejected the indictment of the Applicant and suspended the criminal proceedings against the third party because of the absolute statutory limitation of the criminal prosecution.
49. On 5 June 2011, the Applicant filed again a criminal report with the Municipal Public Prosecutor's Office in Prishtina against the third party, accusing the third party of having committed certain criminal offenses in 1999.
50. On 5 November 2012, the Prosecutor of the European Mission for Rule of Law in Kosovo (hereinafter, EULEX), in the District Court in Prishtina (Decision (PPP no. 3086-2/11) rejected the criminal charge filed by the Applicant against the third party.
51. On 16 November 2012, the Applicant, as the subsidiary claimant, filed with the Municipal Court in Prishtina an indictment proposal against the third party.
52. On 7 December 2012, the Municipal Court (Decision K. no. 3800/12) rejected the subsidiary indictment proposal and the criminal proceedings against a third party, because *"the criminal offences wherewith the Defendants are charged have become statute limited"*.
53. On 2 March 2013, the Applicant filed an appeal with the Court of Appeal of Kosovo (hereinafter, the Court of Appeal) against the Decision of the Municipal Court, *"due to all the legal reasons"*.

54. On 20 May 2013, the Court of Appeal (Decision PN. No. 371/2013) rejected as ungrounded the appeal of the Applicant.
55. In its Decision, the Court of Appeal took into account that *“the time limit of the statutory limitation commences from the date of the commission of the criminal offence”*.
56. The Court of Appeal also considered that, *“starting from the period when the Defendants, by the indictment proposal, are accused that they have committed the criminal offences (in the period between 01 July 1999 and 15 July 1999) until the rendering of the challenged Decision by the first instance court, more than four years and more than ten years have elapsed”*.

## **Applicant's allegations**

### **Referral KI51/15**

57. In the Referral KI51/15, the Applicant claims that the Judgment of the Supreme Court violated his rights to effective legal remedy and to judicial protection, guaranteed by Article 13 of the ECHR and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo, and his right to fair trial (right to access the court, right to a reasoned court judgment, principle of equality of arms and right to trial within reasonable time) as guaranteed by Article 31 of the Constitution of the Republic of Kosovo [Right to Fair and Impartial Trial].
58. The Applicant alleges that he *“was prevented from the peaceful enjoyment of his property and, later (after its complete destruction), he was prevented from exercising his right to compensation”*.
59. The Applicant further alleges that:  
*“the review of the essence of the violation of the right to peaceful enjoyment of property was not carried out”;*  
*“the courts did not review the appealed allegations/revision filed by the Applicant”;*  
*“the proposed pieces of evidence were not presented in the conducted procedure” and*  
*“the trial lasted more than 10 years and during the conducted procedure, it was not decided on the merits related to the violation of property right”*.
60. The Applicant concludes by requesting the Court:  
*“To ascertain the mentioned violations of the Constitution of the Republic of Kosovo (...), and of the European Convention of Human Rights and Fundamental Freedoms and its Protocols”;*  
*“to annul” the challenged decisions, and*  
*“to grant compensation for the material and non-material damage (...) immediately after the Decision/Judgment of the Constitutional Court will be published”*.

## **Referral KI52/15**

61. In the Referral KI52/15, the Applicant claims that the Decision of the Court of Appeal violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 [Right to a fair trial] and Article 13 [Right to an Effective Remedy] of the ECHR.
62. The Applicant alleges that he *“was prevented from confirming in his presence whether the grave criminal offences were committed and who the liable persons were”*.
63. The Applicant further alleges that:
- “the essence of the right violated by the commission of the criminal offence of kidnapping was not reviewed during the conducted procedure, namely, the right to access the court itself was devaluated”;*  
the judgments of the courts and prosecution offices decisions *“do not contain reasoned stances related to the reasons due to which the courts did not review the appealed allegations/revision filed by the Applicant”;*  
*“the proposed pieces of evidence were not presented in the conducted procedure and the appealed allegations were not reviewed”;*  
*“the trial lasted more than 9 (nine) years and during the conducted procedure, it was not decided based on the merits related to the commissioned criminal offence and punishment of the known perpetrator”.*
64. The Applicant requests the Court:
- “To ascertain the mentioned violations of the Constitution of the Republic of Kosovo (...) and of the European Convention of Human Rights and Fundamental Freedoms and its Protocols”;*  
*“to annul” the challenged decisions, and*  
to grant *“compensation for the material and non-material damage (...) immediately after the Decision/Judgment of the Constitutional Court will be published”*.

## **Admissibility of the Referrals**

65. The Court first examines whether the Applicant fulfilled the admissibility requirements established by the Constitution and further provided by the Law and foreseen by the Rules of Procedure in relation to both the Referrals KI51/15 and KI52/15.
66. 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.*

67. The Court also refers to Article 48 [Accuracy of the Referral] 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.*

68. The Court takes into account Rule 36 [Admissibility Criteria] (1) (d) and 36 (2) (d) of the Rules of Procedure, which foresees that:

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

69. On the other hand, the Court also refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes:

*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.*

### **Admissibility of Referral KI51/15**

70. In this regard and in connection with both the Referral's allegations, the Court since now reiterates that the ECtHR upheld that it is the role of regular courts to interpret and apply the pertinent rules of both procedural and material law. (See, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I).
71. The Court also reiterates that the correct and complete determination of the factual situation and applicable law is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, it cannot act as a "fourth instance court". (See case *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65. See also *mutatis mutandis* the case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
72. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of factual findings or applicable law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless

and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). An applicant must submit a reasoned allegation and a compelling argument when claiming that a public authority has infringed her/his rights and freedoms protected by the Constitution.

73. The Court further emphasizes that the task of the Court is to assess whether the regular courts' relevant proceedings related to both the Referrals were fair in their entirety, including the way the evidence was taken, or in any way unfair or tainted by arbitrariness. (See *mutatis mutandis*, *Shub v. Lithuania*, ECtHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009; see also *Edwards v. United Kingdom*, no. 13071/87, Report of the European Commission of Human Rights, of 10 July 1991).
74. The Court recalls that, in the Referral KI51/15, the Applicant claims that the Judgment of the Supreme Court violated his rights to fair and impartial trial (right to access the court, to a reasoned judgment, principle of equality of arms and to a trial within reasonable time), to effective legal remedy and to judicial protection, and consequently "*he was deprived from peaceful enjoyment of his property*".
75. Therefore, the Court will confine itself to the allegations and arguments made by the Applicant on:
- (i) violation of his right to fair and impartial, to effective legal remedy and to judicial protection and, consequently,
  - (ii) violation of his right to protection of property.
76. The Court considers that the two allegations are logically dependent, and the second allegation is a consequence of the first one. Thus the Court starts by analyzing the allegation on a violation of the Applicant's right to fair and impartial, to effective legal remedy and to judicial protection.

**(1). Violation of the Applicant's right to fair and impartial trial and to effective legal remedy**

77. In that 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.*
78. Furthermore, the Court takes into account Article 6 (1) of the ECHR:

*In the determination of his civil rights and obligations, everyone is entitled to a fair hearing by [a] tribunal.*

79. In fact, the Court notes that the Applicant filed the revision with the Supreme Court, due to *“essential violations of the contested procedure and the erroneous application of the substantive law”*.
80. The Applicant alleges that his right to a reasoned decision was violated, because *“the appealed allegations in the appeal procedure before the District Court regarding the passive legitimacy were not reviewed [...] upon analyzing the judgments of the lower instance courts and of the highest court, we can conclude that they do not contain reasoned stances related to the reasons due to which the courts did not review the appealed reasons [...]”*.
81. In that respect, the Court refers to the judgment of the Supreme Court, which concluded that the challenged Judgment of the District Court was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering a lawful decision.
82. Indeed, the Supreme Court found that the *“the lower instance courts (...) have correctly and completely applied the contested procedure provisions”*, *“the judgments of the lower instance courts contain sufficient reasons for the decisive facts, valid for the fair trial of this legal case, which this Court accepts as well”* and that *“the first instance court has correctly applied the substantive law”*.
83. The Court considers that the Supreme Court thoroughly assessed the evidence and analyzed the legal reasons on which it found that *“the first instance court has correctly applied the substantive law, when (...) it rejected the Claim (...) against (...) UNMIK”* and *“it rejected as ungrounded the Claim for the compensation of the material damage against the (...) Government of the Republic of Kosovo and the Municipality of Prishtina”*.
84. Moreover, the Court recalls that the Applicant alleged in his revision that the decision of the first instance was rendered by essentially violating the provisions of the contested procedure. The Court notes that the Supreme Court reviewed the allegation in its Judgment. In that respect, the Supreme Court considered as ungrounded the alleged violation, *“because it does not contain reasons for important facts as regards the responsibility of the Respondents for compensation of the damage”*.
85. The Supreme Court also concluded that *“the first instance court has considered the entire decisive facts as regards the responsibility of the Respondents”*. In addition, the Supreme Court found that *“the allegations in the revision do not contain concrete pieces of evidence, by which the regularity and legality of the appealed Judgments of the lower instance courts would have been questioned”*.
86. The Court considers that the Supreme Court not only upheld the reasons given in the reasoning of the judgments of the lower instances, but also it addressed the essential issues related to the alleged *“violations of the contested procedure and the erroneous application of the substantive law”*.

87. That consideration is in conformity with the jurisprudence of the ECtHR which underlined that the importance of the right to a reasoned decision is well established. (See, among others, cases *Garcia Ruiz v. Spain*, [GC] No. 30544/96, ECtHR, Judgment of 21 January 1999; *Pronia v. Ukraine*, [CC] No. 63566/00 ECtHR, Judgment of 18 July 2006; *Nechiporuk and Tornkalo v. Ukraine*, [CC] No. 42310/04, ECtHR, Judgment of 21 July 2011; *Hirvisaari v. Finland*, No. 49684/99, Judgment of 25 December 2001; *Hadijanastrassiou v. Greece*, No. 12945/87, ECtHR Judgment of 16 December 1992).
88. 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.
89. 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 *Suominen v. Finland*, No. 37801/97, ECtHR, Judgment of 24 July 2003, para 36; *Van de Hurk v. the Netherlands*, No. 16034/90, ECtHR, Judgment of 19 April 1994, para 61; *Jahnke and Lenoble v. France* (déc.); *Perez v. France* [GC] No. 47287/99, ECtHR, Judgment of 12 April 2004, para 81; *Ruiz Torija v. Spain*, No 18390/91, ECtHR, Judgment of 09 December 1994, para 29; *Hiro Balani v. Spain*, No. 18064/91. ECtHR, Judgment 9 December 1994 para 27).
90. Furthermore, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, para 26). However, the notion of a fair procedure requires that a national court which has given sparse reasons for its decisions did in fact address the essential issues which were submitted to its jurisdiction (*Helle v. Finland*, No 157/1996/776/977, ECtHR, Judgment of 19 December 1997, para 60).
91. Therefore, the Court cannot replace the role of the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case: KI70/11 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
92. The Court considers that the Supreme Court addressed the grounds of appeal raised in the Applicant's request for revision.
93. The Applicant also claims that "[...] he did not have the opportunity to present his allegations, so that they could be reviewed and, on this basis, be confirmed as grounded or ungrounded."
94. The Court notes that the Applicant started proceedings with the Housing and Property Claims Commission (Decision DS302754, 27 June 2003) and



continued with the Municipal Court (with three decisions: Decision P. no. 2553/04, 23 November 2006; Decision P. no. 2553/04, 22 January 2007; Judgment P. no. 1728/08, 12 January 2009), the District Court (with three Decisions: Decision AC. 519/07, unspecified date; Judgment GjQ Ac. 519/07, 11 September 2008; Judgment GZ. No. 393/09, 19 November 2010) and with one decision of the Supreme Court (Judgment Rev. no. 159/2011, 9 July 2013).

95. The Court considers that the Applicant had ample access to the regular courts, which decided on the Applicant's allegations within a reasonable time, taking into account the complexity of the case and its overall related circumstances.
96. The Court considers that the Applicant had the opportunity to present his allegations before the regular courts. The lack of passive legitimacy of the then respondents was extensively and comprehensively assessed by all the decisions of the regular courts. Moreover, the Applicant in general had access to the different instances of appeal and review, where he could present arguments and evidence in relation to his claims.
97. The Court further considers that the Applicant has not sufficiently substantiated his allegations and did not prove a violation of his right to fair and impartial trial. Moreover, he has not succeeded to show that the proceedings before the regular courts, including the Supreme Court, were unfair or tainted by arbitrariness or that his rights and freedoms have been infringed.
98. The Court notes that the Applicant disagrees with the conclusion of the Supreme Court on the lack of passive legitimacy of the respondents in the proceedings. However, the mere disagreement of the Applicant 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* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECtHR, Judgment of 26 July 2005).
99. Before all the foregoing, the Court finds that the Applicant's right to a fair and impartial trial was respected in general during the proceedings, and, more specifically, he had free access to the courts, he was given reasoned judgments in the different instances of the proceedings, where the principle of equality of arms was complied with and all the proceedings were conducted within a reasonable time. The Court further finds that consequently his rights to effective legal remedy and to judicial protection were guaranteed.
100. Therefore, the Applicant has not substantiated his allegation for violation of his right to fair and impartial trial and, consequently, his rights to effective legal remedy and to judicial protection. Thus the Referral KI51/15 is inadmissible as manifestly ill-founded on a constitutional basis.



## **(ii). Violation of the right to protection of property**

101. The Court recalls that the Applicant also alleged that he *“was prevented from the peaceful enjoyment of his property and, later (after its complete destruction), he was prevented from exercising his right to compensation”*
102. In that respect, the Court refers to Article 46 [Protection of Property], which establishes:
  1. *The right to own property is guaranteed.*  
(...)
  3. *No one shall be arbitrarily deprived of property.*
103. The Court has just found that the Applicant’s allegation on a violation of the right to fair and impartial trial is inadmissible as manifestly ill-founded on a constitutional basis.
104. Therefore, the Court considers that it is unnecessary to separately examine the admissibility of the Applicant’s allegation, in the Referral KI51/15, on a violation of its right to protection of property under Articles 46 of the Constitution.

## **Admissibility in Case KI52/15**

105. The Court recalls that, in the Referral KI52/15, the Applicant claims that the Decision of the Court of Appeal violated his rights to fair and impartial trial, to legal remedies and to judicial protection of rights.
106. Moreover, the Court notes that the statement of the relief sought of both the Referrals is exactly the same: *“to ascertain the mentioned violations (...)”, “to annul the challenged decisions” and “to grant compensation for the material and non-material damage (...)”*.
107. Thus, the Court will assess the admissibility of the Referral KI52/15, in relation to the specific proceedings and challenged decision of the Court of Appeal and then it will refer to the analysis made in the Referral KI51/15, where applicable and appropriate.
108. The Court notes that the Applicant filed an appeal with the Court of Appeal *“due to all the legal reasons”* and arguing that the Decision of the first instance court *“unjustly rejected the indictment proposal and suspended the criminal proceeding, because (...) the elements of the criminal offences (...) exist in the actions of the Defendants”*.
109. The Applicant alleges, in the Referral KI52/15, that the Decision of the Court of Appeal violated his rights, because *“the right violated by the commission of the criminal offence of kidnapping was not reviewed (...), namely, the right to access the court itself was devaluated; the decisions of the courts and prosecution offices do not contain reasoned stances (...); the proposed evidence were not presented (...) and the appealed allegations were not reviewed; the trial lasted more than 9 (nine) years (...)”*.

110. In that respect, the Court refers to the Decision of the Court of Appeal, which concluded that the challenged Judgment of the District Court was clear and comprehensible and that it contained sufficient reasons and decisive facts for rendering a lawful decision.
111. The Court further notes that the Court of Appeal considered that *“the Decision of the first instance (...) is grounded”*, because *“the Defendants are accused for the commission of the offences during the period between 01 July 1999 and 15 July 1999”* and that *“the absolute statutory limitation of the criminal persecution has been presented for these offences”*.
112. The Court of Appeal explained that *“for the criminal offence “Kidnapping”, provided by Article 159, paragraph 1 of PCCK, which is applicable in the present case, a punishment by imprisonment of six months to five years is foreseen, whereas for the criminal offence provided by Article 259, paragraph 1 of PCCK, a punishment by fine or a punishment by imprisonment of up to six months is foreseen”*.
113. The Court of Appeal further explained that *“based on the provision of Article 90, paragraph 1, item 4 of PCCK, for criminal offences punishable by more than three years of imprisonment, the criminal persecution may not be commenced if more than five years have elapsed since the commission of the criminal offence, whereas based on paragraph 6 of the same Article, for criminal offences punishable by a punishment by fine or more than one year of imprisonment, the criminal persecution may not be commenced if more than two years have elapsed since the commission of the criminal offence. Furthermore, based on the provision of Article 91, paragraph 1 of the same law, the criminal persecution shall be prohibited in every case when twice the period of statutory limitation has elapsed (absolute bar on criminal persecution)”*.
114. The Court of Appeal concluded that *“more than four years and more than ten years have elapsed. Therefore, since in the absolute statutory limitation was reached in the present case, the court has acted fairly when it rejected the indictment proposal and suspended the criminal proceeding”*.
115. The Court considers that the Court of Appeal not only upheld the reasons given in the reasoning of the judgment of the Municipal Court, but also it addressed the essential issues related to the *“all the legal reasons”* for the Applicant’s appeal.
116. That consideration is in conformity with the jurisprudence of the ECtHR which established the importance of the right to a reasoned decision. (See, among others, cases *Pronia v. Ukraine*, 2006; *Nechiporuk and Tornkalo against Ukraine*, 2011; *Hirvisaari v Finland*, 2001; *Hadijanastrassiou v. Greece*, 1992; *Hirvisaari v. Finland*, 2001).
117. The Court considers that the Decision of the Court of Appeal complies with the jurisprudence of the ECtHR on the right to a reasoned decision, as above explained and referred to in the assessment of admissibility of the Referral

KI51/15. (See *Suominen v. Finland*, para 36; *Van de Hurk v. the Netherlands*, para 61; *Jahnke and Lenoble v. France* (déc.); *Perez v. France* [GC], para 81; *Ruiz Torija v. Spain*, para 29; *Hiro Balani v. Spain*, para 27).

118. The Court also considers that it cannot replace the role of the regular courts, which is to interpret and apply the pertinent rules of both procedural and substantive law. (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also Constitutional Court case: KI70/11 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
119. In this regard, the Court reiterates again that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Court of Appeal of Kosovo, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
120. The Constitutional Court further reiterates that it is not its duty under the Constitution to act as a court of fourth instance, in respect of the decisions taken on the absolute statutory limitation of the criminal prosecution. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Constitutional Court case: KI70/11 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
121. The Court considers that the reasoning of the Decision of the Court of Appeal is clear and the proceedings before the regular courts have not been unfair or arbitrary. (See case *Shub v. Lithuania*, no. 17064/06, ECtHR, decision of 30 June 2009).
122. The Court further notes that the Applicant started criminal proceedings filing a criminal report with the Office of the District Public Prosecutor and the report was rejected. Then the Applicant filed an indictment as a subsidiary claimant with the District Court. The indictment went through the confirming judge of the District to the Municipal Court which rejected (Decision PO. No 96/09) the indictment. The Applicant filed an appeal with the Criminal Panel of the Municipal Court and the Applicant's appeal was rejected (Decision Kv. No. 45/11). The Applicant also presented his case to the EULEX Prosecutor in the District Court in Prishtina who rejected (Decision (PPP no. 3086-2/11) the criminal charge filed by the Applicant. The Applicant filed again with the Municipal Court in Prishtina an indictment which was rejected (Decision K. no. 3800/12). Finally, the Applicant filed an appeal with the Court of Appeal and the appeal was rejected (Decision PN. No 371/2013).
123. The Court considers that the Applicant had ample access to the different instances of the regular courts. All of them rejected the claim of the Applicant because of the absolute statutory limitation of the criminal prosecution.
124. The Court notes that the Applicant filed complaints, criminal reports, indictments and appeals with the competent authorities of the regular courts.

They not only justified the Applicant's allegations, but also decided within a reasonable delay.

125. The Court considers that the Applicant had the opportunity to present his allegations before the competent authorities. The statutory limitation of the criminal prosecution was extensively and comprehensibly assessed by all the decisions. Moreover, the Applicant in general had access to the different instances of appeal and review, where he could present arguments and evidence in relation to his claims.
126. The Court also considers that the Applicant has not sufficiently substantiated his allegations and has not explained how and why the decisions on the absolute statutory limitation of the criminal prosecution constitute a violation of his right to fair and impartial trial. Moreover, he has not succeeded to show that the proceedings before the competent authorities of the regular courts, including the Court of Appeal, were unfair or tainted by arbitrariness or that his rights and freedoms have been infringed.
127. The Court further considers, as above in the Referral KI51/15, that the Applicant disagrees with the conclusion of the Court of Appeal on the absolute statutory limitation of the criminal prosecution. However, the mere disagreement of the Applicant with the outcome of the proceedings conducted by the competent authorities of the regular courts cannot of itself raise an arguable claim for breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution. (See *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECtHR, Judgment of 26 July 2005).
128. Also as above in the Referral KI51/15, the Court finds that the Applicant's right to a fair and impartial trial was respected in general during the proceedings. More specifically, he had free access to the courts, he was given reasoned judgments in the different instances of the proceedings, where the principle of equality of arms was complied with and all the proceedings were conducted within a reasonable time. The Court further finds that consequently his rights to effective legal remedy and to judicial protection were guaranteed.
129. Therefore, the Applicant has not substantiated his allegation for violation of his right to fair and impartial trial and to legal remedies. Thus the Referral KI52/15 is inadmissible as manifestly ill-founded on a constitutional basis.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and 2 (d) of the Rules of Procedure, on 20 May 2016, 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.

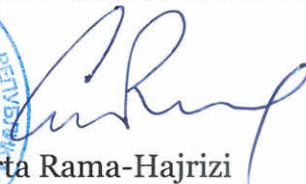
**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi