



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 1 March 2017
Ref. no.: RK 1044/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI82/16

Applicant

Đeljalj Kazagić

Constitutional review of Judgment Pml. No. 13/2016, of the Supreme Court of the Republic of Kosovo, of 10 February 2016

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.

Applicant

1. The Referral was submitted by Đeljalj Kazagić (hereinafter: the Applicant), residing in Mitrovica.

Challenged decision

2. The Applicant challenges Judgment Pml. no. 13/2016, of the Supreme Court, of 10 February 2016 (hereinafter: the challenged Decision).
3. The challenged decision was served on the Applicant on 1 March 2016.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated the rights guaranteed by Articles 24 [Equality Before the Law], 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], 29 [Right to Liberty and Security], 31 [Right to Fair and Impartial Trial], and 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 24 May 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 14 June 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
8. On 8 July 2016, the Court notified the Applicant about the registration of the Referral. A copy of the Referral was sent to the Supreme Court.

Summary of facts

9. On 3 June 2013, the Applicant by the order of the respective authorities was arrested and detained for 48 hours.
10. On 5 June 2013, the pre-trial judge of the Basic Court in Mitrovica imposed on the Applicant the measure of detention on remand for a period of thirty (30) days, after the grounded suspicion that he had committed several criminal offenses.
11. The Applicant was an employee of the United Nation Organization with the Mission in Kosovo (hereinafter: the UN). In accordance with UNMIK Regulation 2000/47, the UN personnel, including the local personnel, shall be immune from arrests and detention. For this reason, On 23 June 2013, the

Chief State Prosecutor in accordance with Law No. 03/L-033 on the Status, Immunities and Privileges of Diplomatic Consular Missions (document 758/2013), through the Ministry of Foreign Affairs, requested the Special Representative of Secretary General (SRSG) of the United Nations Mission in Kosovo (UN) that the Applicant be waived the immunity to proceed further with the trial of his case PP. no. 58/13.

12. On 3 July 2013, the Special Representative of the Secretary General of the UN with the Mission in Kosovo, notified the Chief State Prosecutor that the Secretary General of the UN decided to waive the immunity of the Applicant from the arrest or detention, because of the case PP. no. 58/13 filed against him with the Basic Court in Mitrovica.
13. On 31 March 2014, the Prosecutor of the case in the Basic Court in Mitrovica filed 9 (nine) indictments against the Applicant under the grounded suspicion that he committed the criminal offences contrary to Article 198, paragraph (1) in conjunction with paragraph (5), subparagraph (3); with Article 201, paragraph (4) in conjunction with paragraph (1) and Article 20; with Article 195, paragraph (4) in conjunction with paragraph (1); with Article 198, paragraph (1) in conjunction with paragraph (5), subparagraph (3) and (4); Article 193, paragraph (4) in conjunction with paragraph (2) subparagraph (2); with Article 193, paragraph (3) subparagraph (4); with Article 195, paragraph (2) subparagraph (2) and (3) in conjunction with Article 20; with Article 193, paragraph (2) subparagraph (3); and with Article 241, paragraph (3) of CCK.
14. On 12 February 2015, the Basic Court in Mitrovica rendered Judgment P. no. 42/14, which found the Applicant not guilty of indictments 3, 4, 5, 6 and 9, whereas it found him guilty of indictments 1, 2, 7 and 8, and sentenced him to aggregate punishment of 14 (fourteen) years of imprisonment.
15. On 7 April 2015, the Applicant filed appeal against the Judgment of Basic Court in Mitrovica, with the Court of Appeal in Prishtina, on the grounds of substantial violations of the criminal procedure, erroneous and incomplete determination of factual situation, violation of the criminal law and the decision on the punishment.
16. On 7 September 2015, the Court of Appeal in Prishtina (Decision, PAKR. no. 220/15) approved as partially admissible the Applicant's appeal, regarding the decision on punishment, by modifying the aggregate sentence of 14 (fourteen) years to 11 (eleven) years imprisonment. In other parts, the decision of the Basic Court in Mitrovica remained unchanged.
17. On an unspecified date, the authorized representative of the Applicant submitted a request for protection of legality to the Supreme Court on the grounds of substantial violations of the criminal procedure law and criminal law.
18. On 22 December 2015, a request for protection of legality was filed also by the Applicant.

19. On 6 January 2015, the Supreme Court (Decision Pml. No.268/2016), rejected as ungrounded the request of the authorized representative for protection of legality, reasoning that the decisions of the lower instance courts do not contain essential violations of the procedural and substantive law. In addition, this court came to conclusion that:

“(…)

The conclusions of the first instance court related to the flow of events and the legal qualification of the criminal offences, namely, that the actions of the convict contain all the subjective and objective elements of the criminal offences whereof he was found guilty, which were confirmed also by the second instance court, providing the relevant factual and legal reasons, but also as regards the allegations provided in the appeals of the defense counsels of the accused, are upheld as fair and lawful also by the present Court, since the criminal law was fairly applied, except for the criminal offence provided under count 2 of the enacting clause of the judgment, the reasons of which have been provided above in the present Judgment.”

20. On 10 February 2016, the Supreme Court rendered Decision Pml. No. 13/2016 by which the Applicant's request for protection of legality was rejected as ungrounded. In addition, the Supreme Court concluded:

“(…)

*In fact, the convict has, by this legal remedy, only repeated the allegations presented in his appeal against the judgment of the first instance court. In his request, he refers more to the facts, manner wherein they were confirmed, and the assessment of the items of evidence. In the major part of his Request, he deals with the interpretation and comments on the legal provisions and quotes certain parts of the minutes on the Court hearing, while providing very little explanations as to the violations that are alleged in his request for protection of legality.
(…)”*

Applicant's allegations

21. The Applicant alleges to be a victim of violations of fundamental human rights caused by public authorities and the courts.
22. In addition, the Applicant alleges violation of the constitutional rights, as it follows:
- i. Violation of Article 24, paragraphs 1 and 2 of the Constitution, alleging that he was discriminated against on the grounds of gender, because the trial panel took as credible the statement of the injured S.N. and the witness N.T. (p. 53/424.), because they were women;
 - ii. Violation of Article 27 of the Constitution, claiming that the arrest by the police authorities, the investigation and the trial stages against him influenced on “his mental strength physically unstable.” In addition, the

Applicant alleges that the pressure caused by multiple violations of the Criminal Procedure Code of Kosovo (CPCCK) and CCK, took the form of "Torture, Cruel, Inhuman or Degrading Treatments"; (p. 54/424).

- iii. Violation of Article 29.4 of the Constitution, alleging that he was unlawfully held in detention from the moment of his arrest by the police authorities until his appearance before the pre-trial judge. Moreover, the Applicant alleges that his detention on remand for a month, while he enjoyed immunity as local worker of the UN mission in Kosovo was also unlawful;
- iv. Violation of Article 30.3 of the Constitution, alleging that Presiding Judge denied him the right to defend against charges brought by the prosecutor of the case, and the right to comment and challenge the witnesses' statements and evidence;
- v. Violation of Article 31 of the Constitution, alleging that the provisions of Article 19, paragraph 1, items 1.8, 1.9, and 1.12 of the CPCCK were violated, because the drafting of indictment by the prosecutor of the case was in violation of the law; and that the court avoided the exculpatory evidence that were in his favor;
- vi. Violation of Article 33, paragraphs 2 and 3 of the Constitution, claiming that the severity of the sentence regarding charge no. 8 (eight) exceeded the measure prescribed by the criminal law and was disproportionate to the criminal offense, because the court applied incorrectly Article 193.1 of the CCK, under which is foreseen the imprisonment sentence from two to ten years, instead that the court applied Article 194 of CCK, which provided the punishment of 6 (six) months to five years.

Admissibility of the Referral

- 23. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and as further specified in the Law and the Rules of Procedure.
- 24. According to the case file, the Court considers that: the Applicant is an authorized party within the meaning of Article 113 of the Constitution; he has exhausted all available legal remedies in accordance with the requirements of Article 113.7 of the Constitution; he has met the requirement of the deadline of 4 (four) month, required by Article 49 of the Law; he has accurately specified the alleged constitutional violations and the challenged decisions of the public authorities, by which are alleged the violations of human rights and freedoms guaranteed by the Constitution.
- 25. In addition, the Court takes into account the requirement of Rule 36 (1) (d) of the Rules of Procedure, which establishes:

"(1) The Court may consider a referral if:

(...)

(d) the referral is prima facie justified or not manifestly ill-founded.

26. Based on the Rule above, the Court further assesses if the Applicant's allegations of violation of fundamental human rights and freedoms guaranteed by the Constitution and European Convention on Human Rights (hereinafter: the ECHR) are manifestly founded.

As to the Applicant's allegation under item (i)

27. In this respect, the Court takes into account Article 24 of the Constitution, in conjunction with Article 14 of the ECHR, as it follows:

Article 24 [Equality Before the Law] of the Constitution:

"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."

(...)

Article 14 [Prohibition of discrimination] of ECHR:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

28. First of all, the Court wishes to recall that, as a general rule, the equality before the law means the equality of individuals that are in the equal conditions and their right to equal protection before the law without any discrimination. However, the equality before the law does not mean that an individual or a category of persons who are objectively in different conditions, have similar treatment and choices.
29. The Court, in the circumstances of the Applicant, emphasizes that the equality before the law should be understood as a right of a party to the proceedings, found before a trial in the review, expecting a correct treatment, impartial with equal opportunities to exhaust legal remedies, despite of personal or legal status, that he or she has as a litigating party.
30. In addition, the case law of the European Court of Human Rights (ECtHR) clarifies that within the meaning of Article 14 of the European Convention on Human Rights (ECHR), a treatment is discriminatory if it *"has no objective and reasonable justification"*, that is, if it does not pursue a *"legitimate aim"* or if there is not a *"reasonable relationship of proportionality between the means employed and the aim sought to be realised"* (see, for example judgment of 28 May 1985 in case *Abdulaziz, Cabales and Balkandali v. United Kingdom*, Series A, no. 94, para 78).

31. In this context, the Court, taking into account the elaboration above regarding the rights deriving from Article 24 of the Constitution and Article 14 of the ECHR considers that none of the tests required by these provisions justify the Applicant's allegation of violation of this fundamental right. The Applicant failed to substantiate his allegations and to further prove how and why the trial panel aimed at achieving an illegitimate goal to treat him in an unequal way and in relation to other litigating parties, namely the injured party S.N. and the witness N.Z, only because they were women, same as the Presiding Judge.
32. Accordingly, the Court, on constitutional basis, considers as manifestly ill-founded the Applicant's allegation of violation of the equality before the law.

As to Applicant's allegation under item (ii)

33. The Court takes into account Article 27 of the Constitution, in conjunction with Article 3 of the ECHR.

Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment] of the Constitution: "*1. No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment.*"

Article 3 [Prohibition of torture] of ECHR: "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*"

34. In this respect, the Court assesses if the Applicant's allegations fall within the requirements and the purpose of Article 27 of the Constitution, in conjunction with Article 3 of ECHR.
35. The Court notes that the case law of ECtHR, for the purposes of Article 3, has defined that the Convention even in the most difficult circumstances, such as the fight against terrorism and organized crime, prohibits in absolute terms torture, inhuman or degrading treatment, regardless of the conduct of the victim. According to the ECtHR, inhuman treatment is accepted as degrading only if on the victim or victims intentionally have been inflicted the feelings of fear, anguish and inferiority, humiliation and debasement, breaking their physical or moral resistance, or when the severity of abuse encourages the victim to act against his/her will or conscience (see, *inter alia*, case *Keenan v. the United Kingdom*, No. 27229/95, § 120, ECHR 2001-III, and *Ramirez Sanchez v. France* [CG], No. 59450/00, § 118, ECHR 2006-IX).
36. The ECtHR has further made it clear that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of the minimum level of severity depends on all the circumstances of the case, such as: the duration of the treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the victim (see *Ireland v. United Kingdom*, Decision of 18 January 1978, § 162, Series A no. 25).
37. Furthermore, the ECtHR emphasized that the allegations of ill-treatment must be supported by evidence, and that their assessment must be characterized

beyond reasonable doubt (see, case of ECtHR, *Gök and Güler vs. Turkey*, application no. 74307/01, of 28 July 2009).

38. Therefore, in light of the explanations above, the Court considers that none of the elements required by Article 3 of the Convention, has been met in the case of the Applicant, to hold as constitutionally based his claim of violation of this fundamental right. He has not proved by any evidence that the police or investigation authorities, or anyone under official powers, acted contrary to the requirements of Article 27 of the Constitution in conjunction with Article 3 of the ECHR.

As to the Applicant's allegation under item (iii)

39. The Court takes into account Article 29 of the Constitution, in conjunction with Article 5 of the ECHR.

Article 29 [Right to Liberty and Security] of the Constitution:

(...)

"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."

(...)

Article 5 [Right to liberty and security] of ECHR:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(...)

40. In this respect, the Court will assess whether the Applicant's allegations fall within the meaning of Article 29 of the Constitution, in conjunction with Article 5 of ECHR.
41. 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 (see, *Assanidze v. Georgia*, Application no. 71503/01, Judgment of 8 April 2004). Article 5 further requires that every deprivation of liberty is *"in accordance with a procedure prescribed by law."*

42. In connection with this allegation, the Court notes that the Applicant was informed, initially by the respective authorities, about the reason of the arrest and detention, and later, by the decision of the Court, within the deadline prescribed by law and the Constitution, he was imposed detention on remand for a period of 30 (thirty) days. Therefore, in this context, it cannot be said that the actions of the respective authorities regarding the arrest and detention of the Applicant are contrary to the purpose and requirements of Article 29 of the Constitution, in conjunction with Article 5 of the ECHR.
43. In terms of immunity, the Court notes that the request to waive the immunity of the Applicant was based on the law, namely on Article 7 of the Law No. 03/L-033, which states: *"The immunities in Articles 5 and 6 of this Law may be waived only by the express written agreement of a Head of Mission..."*. In accordance with Article 5 of this Law, the category of individuals within locally recruited staff of diplomatic or consular missions *"...shall enjoy immunity from criminal and civil proceedings for actions performed by them, and words written or spoken, in their official capacity."*
44. The Court notes that the Applicant was arrested and detained by the respective authorities by an order of the prosecutor of the case due to grounded suspicion of committing several criminal offenses, where he was found guilty of some of them and was punished. The Court notes that the nature of the criminal offenses are outside the scope and his official responsibilities as an employee of the UN, and, therefore, it cannot be said that holding him in detention was contrary to the requirements of Article 29 of the Constitution, in conjunction with Article 5 of the Convention, as long as the authorities acted in accordance with a procedure prescribed by the law.
45. In addition, the Court notes that immunity cannot serve as the right to individuals to avoid prosecution and criminal liability for the criminal offenses which are punishable by law.

As to the allegation of Applicant's violation under item (iv)

46. The Court refers to Article 30.3 of the Constitution, in conjunction with Article 6 of ECHR:

*Article 30 [Rights of the Accused] of the Constitution, in conjunction
with Article 6 of ECHR:*

*"Everyone charged with a criminal offense shall enjoy the following
minimum rights:*

(...)

*(3) to have adequate time, facilities and remedies for the preparation
of his/her defense;*

(...)

Article 6 [Right to a fair trial] of ECHR:

“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.

(...)

3. Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

47. In this regard, the Court notes that the same allegations were also raised by the Applicant before the Supreme Court, which in its Decision Pml. no. 13/2016 of 10 February 2016 reasoned: *“This intervention by the presiding judge is considered by the present court to have as its purpose the orientation of the defense of the convict to the facts relevant to the matter, therefore it can by no means be about the denial of the right to present the defense, much more when it is known that the convict had presented his defense for two days without being interrupted.”*
48. Furthermore, the Court notes that at the hearings of the Basic Court in Mitrovica, the Applicant and his authorized representative confronted with the witnesses against them and had the opportunity to question and challenge their statements (see, *inter alia* *Saïdi v. France*, Decision of 20 September 1993, series A no. 261-C, p. 56 § 43, and *AM v. Italy*, No. 37019/97, § 25, ECHR 1999 -IX).
49. In this respect, the Court considers that the Applicant was provided an adequate opportunity to exercise his rights to defence within the meaning of Article 30 (3) of the Constitution, in conjunction with Article 6 of the Convention, therefore, the Court considers also as manifestly ill-founded this Applicant’s allegation

As to the allegation in submissions under item (v)

50. Regarding this, the Court refers to Article 31 of the Constitution, in conjunction with Article 6 of the ECHR:

Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 of ECHR:

“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.”

51. The Court recalls that the Applicant relates the allegations of breach of the right to fair and impartial trial to the legality of drafting the indictment by the prosecutor of the case, alleging a violation of the provisions of Article 19 paragraph 1 item 1.8, 1.9, and 1.12 of CPCK; and that the courts did not take into account the exculpatory evidence that was in his favor.
52. The Court notes that the Applicant’s allegations regarding the legality of drafting the indictment by the prosecutor of the case raise the issues of legality, and as such fall within the scope and jurisdiction of the regular courts. As a rule, the interpretation of law is a matter solely for the regular courts. 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).
53. Regarding to the Applicant’s allegations that the courts did not take into consideration the exculpatory evidence, the Court recalls that it is the duty of the regular courts to assess the evidence made available to them. The Constitutional Court can only consider whether the proceedings before the regular courts in general have been conducted in such a way that the Applicant had a fair trial (See, inter alia, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
54. In this respect, the Court also recalls the case law of ECtHR which states that the taking of evidence is governed primarily by the rules of domestic law and

that it is in principle for the national courts to assess the evidence before them. The institutions' task under the Convention is to ascertain whether the proceedings in their entirety, including the manner in which evidence was taken, was fair. These rights require that the accused be given an adequate and proper opportunity to challenge and question a witness against him, either when he was making his statements or at a later stage of the proceedings (see, *inter alia* *Saïdi v. France*, Decision of 20 September 1993, series A no. 261-C, p. 56 § 43, and *AM v. Italy*, No. 37019/97, § 25, ECHR 1999 -IX).

55. Therefore, considering the abovementioned elaborations it cannot be said that the regular courts did not comply with their duty under Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

As to allegation of the Applicant under item (vi)

56. The Court recalls Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution:

(...)

2. *No punishment for a criminal act shall exceed the penalty provided by law at the time the criminal act was committed.*

3. *The degree of punishment cannot be disproportional to the criminal offense.*

(...)

57. The Court notes that the violation of Article 33, paragraphs 2 and 3 of the Constitution, the Applicant proves with the fact that the severity of the sentence regarding charge no. 8 (eight) exceeds the measure prescribed by the criminal law and is disproportionate to the criminal offense, because the court applied incorrectly Article 193.1 of the CCK, under which is foreseen the imprisonment sentence from 2 (two) to 10 (ten) years, instead that the court applied Article 194 of CCK, which provided the punishment of 6 (six) months to 5 (five) years.
58. The Court in fact considers that this allegation has to do with interpretation of the provisions of the criminal law. Therefore, the Court emphasizes that it is not its task to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as those courts may have infringed rights and freedoms protected by the Constitution (constitutionality). The role of the Constitutional Court is to assess whether the proceedings before the regular courts were correct and fair in entirety, including the way the evidence was taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission on Human Rights, of 10 July 1991).
59. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See *mutatis mutandis* *Garcia Ruiz vs. Spain [GC]*, No. 30544/96, para. 28, European Court of Human Rights [ECtHR], 1999-I)

60. In this respect, the Court considers that the Applicant's allegations of violation of Article 33 of the Constitution are also manifestly ill-founded.
61. From the above, the Court notes that the Applicant merely disagrees with the outcome of the case; however the disagreement cannot serve him as a right to raise an arguable claim on the violation of Articles 24, 27, 29, 30, 31 and 33 of the Constitution (See Case No. KI125/11, *Shaban Gojnovci*, Resolution on Inadmissibility of 28 May 2012, paragraph 28).
62. In sum, taking into account all the above, the Court considers that the Applicant has not substantiated his allegations of a violation of fundamental human rights and freedoms guaranteed by the Constitution, because the facts presented by him do not in any way show that the regular courts denied him the rights guaranteed by the Constitution.
63. Therefore, the Referral, on constitutional grounds is manifestly ill-founded and is to be declared inadmissible in accordance with Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (1) (d) and 36 (2) (b) and 56 (2) of the Rules of Procedure, on 1 March 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; and
- IV. This Decision is effective immediately;

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi

For [Signature]