



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

Prishtina, 30 May 2017
Ref. No.:RK 1086/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KO126/16

Referring Court

**Specialized Panel of the Special Chamber of the
Supreme Court of Kosovo on
Privatization Agency of Kosovo Related Matters**

**Constitutional review of
Law no. 05/L-120 on Trepça**

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

Referring Court

1. The Referral was submitted by the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Referring Court). It was signed by Mr. Werner K. Kannenberg, a judge at the Specialized Panel of the Special Chamber.

Subject matter

2. The subject matter is the constitutional review of Law No. 05/L-120 on Trepça (hereinafter: Law on Trepça), which was adopted on 8 October 2016, promulgated on 31 October 2016 and published in the Official Gazette No. 36 of 31 October 2016.

Legal basis

3. The Referral is based on Article 113.8 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 51, 52 and 53 of the Law on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 75 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

4. On 1 November 2016, the Referring Court submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
5. On 2 November 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding) and Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.
6. On 4 November 2016, the Court notified the Government of the Republic of Kosovo (hereinafter: the Government) and the Privatization Agency of Kosovo (hereinafter: PAK).
7. On 10 November 2016, V. H., a lawyer from Prishtina, filed with the Court an *amicus curiae* submission presented without an invitation by the Court. The abovementioned submission was not taken into account, because not requested by the Court.
8. On 10 November 2016, the Court notified the Referring Court that the proceedings, related with the case KO126/16, which are being conducted before the Referring Court, are suspended until the Constitutional Court renders a decision on this case.
9. On 17 November 2016, the Government sent its comments to the Court.
10. On 21 November 2016, the PAK sent its comments to the Court.
11. On 1 December 2016, the Court sent to the Referring Court the comments submitted by the Government and PAK. At the same time, the Court asked Referring Court to inform the Court whether and how the decision to file the Referral for constitutional review of the Law on Trepça was rendered.
12. On 6 December 2016, the Referring Court through a memorandum responded to the question of the Court and to the comments of the Government and PAK.

13. On 27 March 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. On 23 January 2014, the miner B. B., filed with the Basic Court in Mitrovica a claim against the Socially Owned Enterprise Trepça (hereinafter: the SOE Trepça) for compensation of the damage for the injury sustained at the workplace.
15. On 25 September 2014, the Basic Court in Mitrovica declared itself incompetent to adjudicate the case and, on 26 September 2014, forwarded the case to the Special Chamber with the subject matter and territorial competence.
16. On 23 February 2016, the Specialized Panel delegated the case C-II-14-0114 to Judge Werner K. Kannenberg to decide as a single judge in that case.
17. Judge Werner K. Kannenberg signed the Referral submitted to the Court as a single judge in the case.

Referring Court's argument

18. The essence of the Referring Court's argument for the unconstitutionality of the Law on Trepça is related to the negative effects of this Law on the rights of creditors, who had claims against the SOE Trepça before the entry into force of this Law, including the claimant in the pending case.
19. The Referring Court states that the Law on Trepça *"created a joint stock company from a previous part of the SOE (Trepça). This does not legally affect the status of the SOE"*.
20. The Referring Court further argues that *"while the non-core and unprofitable assets shall remain under the administration of the Privatization Agency of Kosovo (Article 14 paragraph 1), the law transfers the valid core assets of the SOE to the joint stock company (Article 6, paragraph 3, cited in conjunction with Article 2, paragraph 2). Moreover, the enterprise Trepça "loses all the rights, interests and the valid operational licenses," because all this have been transferred to the newly established company"*.
21. The Referring Court states that the claim in the pending case before the Specialized Panel *"relates to the business unit of the Kishnica and Artana Mine (referred to in Article 2, paragraph 2, subparagraph 2), and that for this reason the validity of the law is relevant to the outcome of the case as for the legal heritage/identity of the respondent, as well as for the question whether the claimant by law is subject to unconstitutional expropriation without compensation"*.

22. In relation to that case, the Referring Court states that *“based on the results of the case review so far, according to preliminary assessment of the court, it is most likely that the claim will result in at least partially successful”*.
23. The Referring Court further argues that, *“if the division of assets going to the joint stock company is realized, whereas the obligations remain with the SOE Trepça, this will also have serious legal implications. Because it is clear that the transfer of property carried out according to the law seriously affects the value of any claim against the SOE, by effectively reducing it to zero for unsecured statements of claims such as the one of the claimant ... therefore, because of the impact on all creditors, in the sense that it divides assets from liabilities, the law appears to be unconstitutional, it violates the constitutional guarantees for the protection of property against expropriation without compensation (Article 46 of the Constitution)”*.
24. Moreover, according to the Referring Court, *“as 20% of assets obtained by the SOE Trepça have been transferred into a private property, this must be justified by the public interests or goals. In the absence of such a justification, the Court considers that the law is also unconstitutional on this ground”*.
25. The Referring Court states that *“the Constitutional Court has already decided on the Law on Trepça ... as a result of the request of some members of the Assembly [...] The decision on the inadmissibility of the Constitutional Court does not foresee the same matter which is the essence of the present referral”*.
26. Finally, the Referring Court states that, *“as it is an exclusive prerogative of the Constitutional Court to formally revoke a legislation approved by the Assembly, the Court in accordance with Article 113, paragraph 8 of the Constitution, files the issue of the constitutionality of Law No. 05/L-120 Trepça through a Referral to the Constitutional Court”*.

Response of the Government

27. The Government considers that the Referral is inadmissible, because it does not meet the admissibility requirements provided by the Constitution of the Republic of Kosovo, the Law on the Constitutional Court and the Rules of Procedure of the Constitutional Court.
28. After stating that the present case is similar to the case KO59/14, where a single judge submits the Referral individually, the Government reiterates that, *“based on the documents available, it can be clearly seen that the judge in question has no decision by the panel or the president of the Supreme Court, part of which is the Special Chamber, for submitting such a Referral to the Constitutional Court. This procedure is clearly defined in Article 113.8 of the Constitution, as interpreted by the Constitutional Court in the cases decided above”*.
29. The Government further refers to the Judgment of the Court in case KI25/10, where *“the Constitutional Court has made it clear that the Special Chamber of the Supreme Court cannot adjudicate nor act against the primary mission of*

the Supreme Court, part of which is the Special Chamber itself". The Government argues that "[...] the conclusion of the referring Judge that if the creditor claims against SOE Trepça would be approved as based on merit, such enterprise would not be liquid for fulfilling them [...] is beyond his material jurisdiction because he cannot simply suppose the amount of compensation which could result by the claims which have not yet been subject to the review on merits, and, which as long as they are not reviewed based on merits have the simple status of the creditor claims".

30. The Government further argues that "the referring judge does not prove in any way the need for solving a constitutional contest as a precondition for him to proceed with solving his individual case [...] the material jurisdictional basis for solving such a case is the Law on PAK, while the Law on Trepça does not violate under any circumstance the right of the creditor claimants for realizing their rights related to the SOE Trepça and PAK".
31. In addition, the Government states that "[...] the creditor claims are protected by the principle of non-contractual responsibility of the state, which is the fundamental principle of the law. [...] However, such compensation would be realized only after the possible creditors win the right to compensation through a final Decision of the Court the application of which could not be done due to the insufficiency of liquids of SOE Trepça and PAK".
32. The Government further states that "allowing the judiciary to consider a law as unconstitutional in hypothetical manner [...] represents a violation of the principle of separation of powers and intervention of the judiciary in the legislative authority for adoption of the laws with general character".
33. The Government requests the Court "[...] to hold that the Applicant, individual Judge Mr. Werner K. Kannenberg is not an authorized party, and it is not within his jurisdiction *ratione materiae* to submit such a referral, therefore, this Referral is to be rejected as inadmissible".
34. Finally, the Government states that "if the Constitutional Court finds that the above mentioned Referral is admissible, then the Government shall request to reject the Referral based on two reasons: **first**, as a request for a *res judicata* case (case KO118/16); and **second**, that the request raised a hypothetical issue by prejudicing the conduct of the state of Kosovo in the future regarding the right to property in all other contested cases which are related to the implementation of the Law on Trepça even though there is still no Decision of Kosovo court authorities which are based on the application of Law on Trepça and its legal interpretation in concrete cases".

Response of Privatization Agency of Kosovo

35. The PAK informed the Court that "the respondent in its entirety compensated the claimant according to the extrajudicial agreement/settlement which was reached between the parties on 25 April 2014, namely on 19 February 2015".

36. The PAK further clarifies that *“the claimant B.B. did not withdraw the claim despite the fact that he signed the agreement and received the compensation for the injury at workplace, the material and non-material damage”*.
37. PAK further states that *“Article 15 of the Law on Trepça provides that the creditor claims towards the Socially Owned Enterprise Trepça submitted to the Privatization Agency of Kosovo under the Law No. 04/L-035, on the Reorganization of Certain Enterprises and their Assets, amended and supplemented by the respective law, are dealt in accordance with the Law on Privatization Agency of Kosovo [...]. Paragraph 3 of this law states that ‘as of the entrance of this law all rights and obligations regarding Trepça will be treated in accordance with the law on publicly owned enterprises’*”.
38. PAK further states that *“the claimant B. B. did not file creditor claim with PAK. The claimant filed allegations for certain monetary compensation which are the subject of a judicial process, non-finalized with the decision on merits. These allegations are addressed against an entity (Mine and Flotation Kishnica and Artana) which did not cease to exist nor liquidated, but was a subject to legal transformation”*.
39. PAK considers that *“the transformation of these units is lawful and in accordance with the Constitution of the Republic of Kosovo. The transformation into J.S.C. of some units is in the interest of the enterprise and employees”*.

Additional responses and comments of the Referring Court

40. On the question of the Court whether as to how the decision to submit this Referral was taken in the Special Chamber of the Supreme Court, the Referring Court responded that *“the request in question was signed by the undersigned single judge, in the required composition for reviewing the case C-II-14-0114, namely, “the Court” in this case.”*
41. The Referring Court argues that any composition of the (regular) court, which has a competence to decide on the case, may file a request for incidental control with the Constitutional Court. In this regard, he states that *“The Special Chamber of the Supreme Court is a part of the Supreme Court. Accordingly, the compositions of the Special Chamber are compositions of the Supreme Court. As it is a case in every other country, any decision rendered by the above-mentioned composition provided by the law is the decision of the “Court” and, this is the reason why legal provisions regarding the composition of the Court exist”*.
42. The Referring Court further considers that *“[...] the filing of referrals with the Constitutional Court and the following exchanges of the memorandums are not administrative actions. Such a thing is a part of the judicial function of the court which files the referral. Therefore, all the provisions and the guarantees in the court procedure are valid: only the competent court may decide, the internal or external interference by the persons, who is/are not the judge(s) responsible for the case cannot be allowed”*.

43. The Referring Court states that “if the Constitutional Court will tend to consider as inadmissible the referral of the entire law [...] the Court requests the annulment of the provisions that take the assets of SOE Trepça”. In this regard, the signing Judge requests the annulment of the following provisions: Article 2 (2) and Article 6 (3); Article 5 (2) (3) (4) (5).
44. The Referring Court states that, “when a person is an owner of a claim, but by legal interference, the value of claim becomes equivalent to zero, he becomes a “nudum ius” owner, the right which formally exists and without any value. Since the value of the monetary claim allows the enjoyment of a right, this is protected by the ECHR under Article 1 Protocol 1 and Article 14 of ECHR”.
45. Finally, the Referring Court “[...] invites the Constitutional Court that, in the interest of the claimant in this case, but in general in the interest of the society in entirety, to demonstrate to the public that the justice in Kosovo acts in an independent manner and prevails over the [political] authority, to address the injustice, with a decisive stance regarding the value of the Constitution towards the legislative and the politics in Kosovo. Therefore, this Court suggests that the Referral be considered admissible and to order the proper compensation”.

Relevant legal and constitutional provisions

Relevant constitutional provisions:

Article 102 [General Principles of the Judicial System]

1. *Judicial power in the Republic of Kosovo is exercised by the courts.*
2. *The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.*

Article 46 [Protection of Property]

1. *The right to own property is guaranteed.*
2. *Use of property is regulated by law in accordance with the public interest.*
3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
4. *Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*
5. *Intellectual property is protected by law.*

Respective provisions of the Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

Article 9 [Conduct of Proceedings By a Sub-Panel or Single Judge]

1. Any specialized panel of the Special Chamber may issue an order delegating to one of its members or to a subpanel consisting of two of its members the responsibility and authority to conduct any or all proceedings for a case within its subject-matter jurisdiction. Judgments and Decisions issued by such a single judge or sub-panel shall be deemed to be issued by the concerned specialized panel.

Respective provisions of Law no. 05/L-120 on Trepça

Article 2 [Scope]

1. Provisions of this Law determine the transformation of business units listed in paragraph 2 of this Article into a Joint Stock Company Trepça JSC.
2. Business units of Trepça JSC are:
 - 2.1. Mines with Floatation Trepça-Stan Tërg (Fi 690/89);
 - 2.2. Mines with Floatation Kishnicë and Artanë (Fi 349/88);
 - 2.3. Mines with Floatation Kopaonik – Leposaviq (Fi 804/89);

Article 5 [Mining resources, transfer of assets, rights and human resources]

2. Trepça JSC shall explore and exploit mineral resources based on a license for exploration and exploitation issued in accordance with the legislation into force in the Republic of Kosovo.
3. All rights, interests and valid operational licenses of the Socially Owned Enterprise Trepça shall be transferred to Trepça JSC.
4. All employees with a regular employment contract with a business unit defined in this Law shall continue their employment relation with the respective business unit from the date of entry into force of this Law.
5. Trepça JSC shall inherit the right of valorization of technological remains from the past and treating them in compliance with environment standards and feasibility study.

Article 6 [Statute]

3. Assets of Trepça JSC consist of assets of business units established by this Law, and their value is determined in the statute, based on the feasibility study and standard valuation methods.

Article 14

1. *Other assets of the socially owned enterprise “Trepça”, which are not transformed in accordance with this Law into Trepça JSC shall be treated as per the recommendations of the feasibility study. Non-core and unprofitable asset shall remain under PAK management, in order to be subject to privatization of liquidation, in accordance with the Law.*

CHAPTER VIII CREDITOR CLAIMS

Article 15

1. *Creditor claims against the Socially Owned Enterprise Trepça submitted at the Privatization Agency of Kosovo according to the Law No.04/L- 035 on Reorganization of Certain Enterprises and their Assets, amended and supplemented by the respective Law, shall be treated according to the Law on Privatization Agency of Kosovo.*

2. *Other possible creditor claims against Socially Owned Enterprise Trepça presented until the date of setting the liquidation of assets according to Article 14 of this Law, shall be treated according to the Law on Privatization Agency of Kosovo.*

3. *From the entry into force of this Law all rights and obligations related to Trepça JSC will be treated in compliance with the Law on Publicly Owned Enterprises.*

Comparative law

46. The Court notes that a large number of European states have foreseen the so-called “preliminary ruling procedure,” through which a regular court brings a question of the constitutionality of legislation before the Constitutional Court, when it has doubts as to whether specific provisions of a legislative act, that should be applied in a concrete case, are compatible or not with the Constitution. This procedure is named in various ways, while in the terminology of the constitutional justice in Kosovo it is commonly known as “incidental control of constitutionality”.
47. From a comparative analysis it can be seen that the regular courts of the majority of European countries are authorized to submit a request to the Constitutional Court for assessing the constitutionality of specific provisions of the law (in some countries also of other acts), which should be directly applicable in a concrete case of the court. Such an authorization exists, namely, in Albania, Armenia, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Germany, Hungary, Italy, Macedonia, Romania, Slovenia, Spain and Turkey. In some countries, such as Bulgaria, Greece and Latvia, only the higher courts are authorized to initiate incidental control before the constitutional courts.
48. The comparative analysis highlights the following common elements of incidental control of constitutionality: first, there should be a specific case

under review before the regular courts; secondly, there must be a justified doubt that the relevant legal provisions to be applied directly in resolving that case by regular courts may be incompatible with the Constitution; and thirdly, the regular courts should follow an established procedure for referring the case to the Constitutional Court.

Admissibility of the Referral

49. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and in the Rules of Procedure.
50. In this regard, the Court initially refers to 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.

(...)

8. The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court’s decision on that case depends on the compatibility of the law at issue.”

51. In addition, the Court refers to Articles 51, 52, 53 of the Law, which stipulate:

Article 51 [Accuracy of referral]

1. A referral pursuant to Article 113, Paragraph 8 of the Constitution shall be filed by a court only if the contested law is to be directly applied by the court with regard to the pending case and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court.

2. A referral shall specify which provisions of the law are considered incompatible with the Constitution.

Article 52 [Procedure before a court]

After the submission of a referral pursuant to Article 113, Paragraph 8 of the Constitution, the procedure before the referring court shall be suspended until a decision of the Constitutional Court is rendered.

Article 53 [Decision]

The Constitutional Court shall decide only about the compliance of the legal provision with the Constitution and shall not decide on other factual or legal matters related to the dispute before the referring court.

52. The Court also refers to Rules 75 and 76 of the Rules of Procedure, which provide:

Rule 75 [Filing of Referral]

(1) Any Court of the Republic of Kosovo may submit a Referral to the Court pursuant to Article 113.8 of the Constitution, ex officio, or upon the request of one of the parties to the case.

(2) The referral shall state why a decision of the court depends on the question of the compatibility of the law to the Constitution. The file under consideration by the court shall be attached to the referral.

(3) Any Court of the Republic of Kosovo may file a referral to initiate the procedure pursuant to Article 113. 8 of the Constitution regardless of whether a party in the case has disputed the constitutionality of the respective legal provision.

Rule 76 [Notification]

The Court, following filing of the referral, shall order the court to suspend any ongoing procedures with respect to the case in question until the Court has issued a decision or Judgment in the case.

53. The Court observes that, unlike many other countries, in the Republic of Kosovo the practice of the referrals for constitutional review of the legal norms by the regular courts is limited to two cases (namely Case KO04/11 and KO59/14).
54. In the present case, in order to review the admissibility requirements the Court shall first examine whether the Referring Court is authorized to file such a Referral.
55. In this regard, the Court recalls that, in its Resolution on Inadmissibility in case KO59/14, it established that the right of the regular courts to file a referral for the constitutional review of the legal norms stems from Article 113, paragraph 8, of the Constitution. However, in accordance with this article, “*the court*” is authorized; not “*the judges*” (see Constitutional Court case KO59/14, Resolution of 14 July 2014). This stance was justified by the Court by referring to the distinction made by the Constitution and the Law on Courts, between the “*courts*” and the “*judges*”.
56. However, the Court considers that the circumstances of the present case differ substantially from those of the case KO59/14. Thus, in the case KO59/14 the Referral was filed by the Presiding Judge (of the Department for Serious Crimes), and that case was to be adjudicated by a trial panel. Moreover, in that case, the President of the relevant Basic Court to which the judge belonged informed the Constitutional Court that within the said Basic Court no decision was rendered to refer the case for the incidental control of constitutionality.

57. In the present case, the Referring Court adjudicates the case through a single judge, in accordance with Article 9 [Conduct of Proceedings By a Sub-Panel or Single Judge] of Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, which provides:

“1. Any specialized panel of the Special Chamber may issue an order delegating to one of its members or to a subpanel consisting of two of its members the responsibility and authority to conduct any or all proceedings for a case within its subject-matter jurisdiction. Judgments and Decisions issued by such a single judge or sub-panel shall be deemed to be issued by the concerned specialized panel.”

58. The Court recalls that the Specialized Panel delegated the case to Judge Werner K. Kannenberg to decide as a single judge in that case. Thus, *“(…) Decisions issued by such a single judge (…) shall be deemed to be issued by the concerned specialized panel”*, namely for the purpose of Article 113, paragraph 8, of the Constitution, which authorizes “courts” to refer to the Constitutional Court questions of constitutional compatibility of a law.
59. The Court considers that, within the meaning of Article 113, paragraph 8, of the Constitution, a “court” is any judge or panel of judges that has full and complete jurisdictional power to adjudicate the merits of a case pending before it.
60. Therefore, taking into account the abovementioned explanations, the Court considers that the present Referral was submitted by “the court” within the meaning of Article 113.8 of the Constitution.
61. Furthermore, the Court recalls Article 51 of the Law, which provides:

“1. A referral pursuant to Article 113, paragraph 8, of the Constitution shall be filed by a court only if the contested law is to be directly applied by the court with regard to the pending case and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court.

2. A referral shall specify which provisions of the law are considered incompatible with the Constitution”.

62. From the above, it transpires that for any Referral submitted under Article 113, paragraph 8, of the Constitution to be admissible, it must comply with the following criteria:
- a) the referring court must have a case pending before it;
 - b) the contested law must be directly applied by the referring court in the pending case;
 - c) the lawfulness of the contested law is a precondition for the decision on the pending case; and
 - d) the referring court must specify which provisions of the contested law are considered incompatible with the Constitution.

63. The Court notes that as an essential requirement explicitly provided in the Law and the Rules of Procedure for the admissibility of a Referral for incidental control of constitutionality is the existence of the so-called “direct connection” element between the provisions of the challenged law and the subject matter that is to be adjudicated before the regular courts.
64. The Court considers that “*the direct application*” of the concrete norm means that the outcome of the decision by the Referring Court depends on the direct implementation or non-implementation of the contested norm.
65. The Court notes that this interpretation is supported by the case law of other countries. For instance, the German Constitutional Court emphasizes the connection element between the challenged norm and the concrete case, reasoning that, “[...] *if the Court declared unconstitutional the challenged provision, the claim would be rejected, whereas declaring those provisions as constitutional, this would result in the approval of the claim*” (see: *Decision of German Federal Constitutional Court 2 BvL 12, 13, 14, 15/56 of 6 November 1957*).
66. Along the same lines, the Constitutional Court of Albania argues that “*the applicant must form the opinion that the law he assesses as unconstitutional will be implemented to resolve the issue. On the contrary, if the applicant considers that a law cannot be applied by him to solve the issue even though, according to him, it is unconstitutional, then he must continue with the adjudication of the case.... (See the Constitutional Court the Republic of Albania-Decision V-30/10 of 17 June 2010 and Decision No. 13, of 4 May 2009).*”
67. The Court notes that, in the present case, the proceedings before the regular court (the Specialized Panel) were initiated according to the “*claim for compensation*” for the damage suffered at the workplace. On the other hand, the Referring Court emphasizes that “*the claim in question relates to the business unit of the Mines Kishnica and Artana (referred to in Article 2, paragraph 2, subparagraph 2), and that for this reason the validity of the law is relevant to the outcome of the case, as for the legal heritage/identity of the respondent as well as for the question whether the claimant according to the law is subject to unconstitutional expropriation without compensation*”.
68. After reviewing the Referring Court’s arguments and the case file, the Court notes that none of the provisions of the Law on Trepça should be applied directly in the procedure of deciding the merits of the case before the referring court. The Law on Trepça does not itself regulate the resolution of disputes regarding creditor claims upon Trepça. Moreover, the Law on Trepça explicitly stipulates, in Article 15, that there are two other laws that apply directly to all creditor claims, namely the Law on Privatization Agency of Kosovo and the Law on Public Enterprises.
69. The Court notes that the essence of the Referral is contained in the argument that the Law on Trepça renders the creditor’s claim not executable and, therefore, hypothetical. This argument presupposes that the entry into force of the Law on Trepça makes ineffective any award which the claimant, in a

capacity of a potential creditor, will be able to receive, and thereby render ineffective any opportunity to have an adequate court treatment of his claim.

70. Moreover, the Court notes that the Referring Court *a priori* predicts the outcome of the proceedings, while stating that “*based on the results of the examination of the case, according to preliminary assessment of the court, it is most likely that the claim will result in at least partially successful*”.
71. The Court notes that it is not within the scope of its jurisdiction to make a constitutional interpretation of the relevant legal provisions, on the basis of hypothetical predictions regarding the manner in which the regular courts can implement them in the future.
72. In addition, the Court notes that, in essence, the Referring Court argues the unconstitutionality of the entire Law on Trepça; not only specific provisions thereof, and makes the argument by claiming that the law violates the rights of all potential creditors to the SOE Trepça.
73. Accordingly, the Referring Court does not elaborate on what provisions of the Law on Trepça considers unconstitutional. It only mentions some of the Articles of the Law on Trepça, requesting their constitutional review as an alternative solution, namely “*if the Court should be inclined to declare inadmissible the referral of the entire law*”.
74. The Court considers that the casual reference to some of the articles of the contested Law does not imply their specification, as required by Article 51(2) of the Law. Accordingly, this is inconsistent with the requirement for the reasoning of the uncertainty as to the constitutional compatibility of specific Articles of the Law.
75. The Court recalls that, in accordance with Article 113.8 of the Constitution, the incidental control of constitutionality is the procedure for the constitutional review of concrete norms/specified provisions of the law and is not the procedure for the abstract control of constitutionality. The Constitution of the Republic of Kosovo does not recognize to regular courts authorization to refer the request for the abstract control of the legislative acts.
76. In addition, the Court recalls its Resolution on Inadmissibility of 31 October 2016 in Case KO118/16, in which the Court made an assessment *in abstracto* of the constitutionality of the Law on Trepça.
77. In conclusion, the Court considers that the Referral does not support the argument that the provisions of the challenged Law apply directly to the proceedings taking place before the Referring Court and does not specify sufficiently what provisions of the law are considered incompatible with the Constitution and why they are incompatible.
78. Therefore, the Court finds that the Referring Court has not substantiated his claims and thus the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.8 of the Constitution, Articles 51, 52 and 53 of the Law, and Rules 36(2)(d) and 75 of the Rules of Procedure, on 27 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. TO DECLARE this Decision effective immediately.

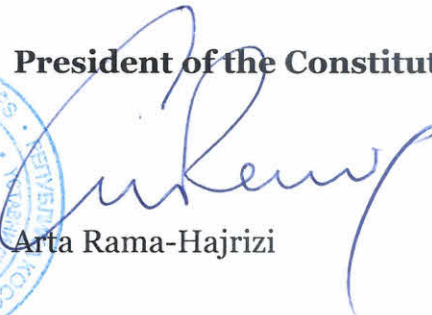
Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi