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

Pristina, 3 February 2014
Ref.no.:RK544/14

# RESOLUTION ON INADMISSIBILITY

in

**Case No. KI96/13**

Applicant

**Branko Radeč**

**Constitutional Review of the Decision, PZ. no. 169/12, of the Court of Appeal in Pristina, dated 21 January 2013.**

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

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

## Applicant

1. The Referral is submitted by Mr. Branko Radeč (hereinafter: the "Applicant"), residing in Belgrade, Serbia.

## Challenged decision

2. The Applicant challenges the Decision, PZ. no. 169/12, of the Court of Appeal in Pristina of 21 January 2013, which was served on the Applicant on 5 March 2013.

## Subject matter

3. The Applicant requests the constitutional review of the Decision, PZ. no. 169/12, of the Court of Appeal, which allegedly violates Articles 3 [Equality Before the Law], 19 [Applicability of International Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights], 56 [Fundamental Rights and Freedoms During a State of Emergency], and 156 [Refugees and Internally Displaced Persons] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Articles 6 [Right to a Fair Trial], 8 [Right to Respect for Private and Family Life], 13 [Right to an Effective Remedy], and 14 [Prohibition of Discrimination] of the European Convention on Human Rights (hereinafter: the "ECHR"). Additionally, the Applicant further alleges that Article 1 of Protocol 1 [Enforcement of Certain Rights and Freedoms not included in Section I of the Convention] and Protocol 12 [General Prohibition of Discrimination] of the ECHR have also been violated.

## Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## Proceedings before the Court

5. On 5 July 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").

6. On 5 August 2013, the President of the Constitutional Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

7. On 5 September 2013, the Applicant was notified of the registration of the Referral and was asked to supply the following documents to the Court:

   a. The Decision of the Court of Appeal in Pristina Pz. no. 169/12, dated 21 January 2013;
   b. The Ruling of the Municipal Court in Vushtrri, dated 15 October 2010;
   c. The Claim for compensation of damage to the Municipal Court in Vushtrri; and
   d. The Appeal against the Ruling of the Municipal Court in Vushtrri.

8. On 14 October 2013, the Court received the requested documents from the Applicant.

9. On 21 October 2013, the Court notified the Court of Appeal in Pristina of the registration of the Referral.

10. On 2 December 2013, 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**

11. On 25 May 2004, the Applicant submitted a claim with the Municipal Court in Vushtrri against the Municipality of Vushtrri, Provisional Institutions of Self-Governance in Kosovo, and the Government of Kosovo, seeking compensation for damaged property. In the complaint, the Applicant alleged that *"after the arrival of KFOR in Kosovo, the buildings that are located in the mentioned plot have been completely destroyed and the immovable property was stolen and destroyed, the orchard, acacia plantation and the forest were cut down, and the agricultural land is used by unauthorized persons."*

12. On 15 October 2010, the Municipal Court in Vushtrri (P. no. 303/2004) issued a decision on the Applicant's claim. In the Decision, the court determined that the claim of the Applicant was withdrawn for failure to pay the mandatory court filing fees. The Municipal Court in Vushtrri held that: *"A warning was submitted to the claimant in relation to the payment of the court claim fee through the notification table of the court on 29.09.2010, but the same until now did not pay the claim fee pursuant to Article 3 item 1 and 10 item 1 of Administrative Instruction. Therefore the court pursuant to Article 253, item 5 of the LCP [Law on Contested Procedure] decided as in the enacting clause of this Ruling."*

13. On 21 January 2013, the Court of Appeal in Pristina (PZ. no. 169/12) rejected the Applicant's appeal as not grounded and confirmed the decision of the Municipal Court in Vushtrri (P. no. 303/2004 of 15 October 2010). The Court of Appeal held that: *"The court [Municipal Court in Vushtrri] submitted to the claimants the warning to pay the claim fee through the notification board of the court since 29.09.2010, but the same did not pay the claim fee, which is defined pursuant to Article 3, item 1 and 10 of administrative instruction, thus the first instance court pursuant to Article 253, item 5, of the LCP [Law on Contested Procedure], decided as in the enacting clause of the challenged Ruling. . . . [The] court considers that the appeal of the claimants are not grounded, because the first instance court has undertaken several actions toward the claimants with the aim that they pay the court claim fee, missing on the order to pay the court feeds of date 27.01.2010, correspondence addressed to the Ministry of Justice, Office for International Cooperation of date 03.02.2010, Ruling dated 29.09.2010 etc, but the claimants did not pay the court claim fees and pursuant to the provision of Article 253.4 of the LCP, it is envisaged that the claimant submits evidence on the payment of court claim fee, whereas pursuant to Article 253.5, it is envisaged that if the*

*appropriate court claim fee is not paid, even after the court's warning, and if there are no candidates for exclusion, it will be considered that the claim has been withdrawn, at this point it is worth mentioning that the claimant upon the proposal for exclusion did not submit any evidence, that is not even a certificate on the financial status of the competent authority, in the mean time with the respective provisions of the administrative instruction no.2008/2 on the unification of court fees."*

**Applicant's allegations**

14. The Applicant alleges that the *"actions of the courts in the Republic of Kosovo* have *violated [his] rights to enjoy [his] personal property and rights to safety because there is a duality in the administrative decisions of court."* In addition, the Applicant claims that the *"state has taken over responsibility to protect the property of all its citizens and at the same time it is the successor of international institutions in Kosovo and legally it is impossible that nobody is responsible for the damage that cause to [him] during the riots in 2004."*

15. The Applicant further alleges that the following Articles of the Constitution rights have been violated:

    a. Article 3 [Equality Before the Law], arguing that *"the members of the Serbian people are not equally treated as the other citizens of Kosovo."*

    b. Article 19 [Applicability of International Law], arguing that in conjunction with Article 1 of Protocol 1 of the European Convention on Human Rights, his right to enjoy his property was violated because it has been destroyed for over 10 years and he is unable to *"realize [his] right to just compensation."*

    c. Article 24 [Equality Before the Law], arguing *"that pursuant to the same factual and legal grounds the same court with one decides and with the other rejects due to nonpayment of court taxes which that court is not factually or formally to pay."*

    d. Article 31 [Right to Fair and Impartial Trial], arguing that because Article 24 was violated, Article 31 was also violated *"considering that two Judgments from one court on the same matter are in fact contradicting each other."*

    e. Article 32 [Right to Legal Remedies], claiming that the documents he provided *"prove that the procedures conducted on the compensation of material damage pursuant to destroyed immovable property by terrorist acts were selectively suspended – only for the members of Serbian nationality."*

    f. Article 46 [Protection of Property], arguing that by not receiving compensation from the appropriate authorities back in 2004, he has suffered material damage, which the Applicant claims is in violation of his constitutional right.

g. Article 54 [Judicial Protection of Rights], arguing that he has *"been discriminated by the courts because my proceeding was suspended because of not paying the court tax – this severely impaired my access to court – which even pursuant to the practices of European Court on Human Rights presents a violation of the Convention."*

h. Article 56 [Fundamental Rights and Freedoms During a State of Emergency].

*i.* Article 102 [General Principles of the Judicial System], arguing that in cases similar to his, where there is a Serbian national involved, there is a question of whether *"the judicial power is not impartial or apolitical. When citizens of Serbian nationality are in question a series of specific questions in the context of Kosovo arise – it is not always clear who are the bearers of responsibilities, although it is clear that the internally displaces persons have been expelled from their homes, which were subsequently destroyed, and when it is necessary the bearer of the compensation of the damage, then this is factually impossible, which makes meaningless the rights of displaced persons."*

It is the position of the Applicant that, as a general rule, *"internally displaced persons enjoy the same rights as any other citizen of the state of their residence, when it is implemented on the situation of the internally displaced persons in Kosovo, this would mean that they can realize their property rights as any other citizen of Kosovo."* However, despite this, the Applicant argues that *"citizens of Serbian nationality [are] not equally treated by the relevant national and international bodies, and their requests remain unanswered."*

To further support this allegation, the Applicant notes that claims submitted by internally displaced individuals from Kosovo are *"submitted against UNMIK and KFOR, as well as provisional institutions in Kosovo"* in order to receive just compensation for damages that occurred to their property, which was the result of the *"NATO bombings in 1999, as well as riots in March 2004."* The Applicant's claim, among thousands of others, were "frozen" at the request of the Director of UNMIK Department of Justice (letter sent to all municipal and district court presidents and to the President of the Supreme Court of Kosovo on 26 August 2004). The purpose of the "freeze" was determine how best to handle the influx of claims. (See para. 15 Human Rights Advisory Panel Opinion dated 23 February 2011, Case No. 27/08, et al.). The Human Rights Advisory Panel determined that this suspension of proceedings was in direction violation of Article 6 § 1 of the European Convention on Human Rights and the right to a fair trial.

j. Article 156 [Refugees and Internally Displaced Persons], arguing that the *"[d]ecisions of official authorities and courts in the Republic of Kosovo do not protect my rights guaranteed by Article 156 of the constitution but directly violate with the challenged and contradictory decisions rendered against me."* The Applicant draws attention to the

fact that the processing of his case, among numerous others of factually similar backgrounds, were commenced only recently to then be rejected. The issue that the Applicant draws attention to is *"who is responsible for the return of the property and the compensation of destroyed property."*

The Applicant further argues that simply because there are *"18.000 claims [that] remain unsolved and are often described as [a] burden to the Kosovo justice that have to be rescinded as soon as possible. It seems that the rights of those that have initially submitted the claims are not a priority."* In other words, a burden on the judicial system is not a satisfactory reason to deny an individual his constitutionally guaranteed rights and freedoms. *"[T]he courts in Kosovo have started rejected such claims, while at the same time the poor applicants of the claim, internally displaced persons, give significant amounts of money for court expenses in their attempts to realize their rights."*

k. Article 53 [Interpretation of Human Rights Provisions], arguing that *"there are numerous examples of the decisions that confirm that in my case several human rights have been violated by the courts of Kosovo."*

l. Article 54 [Judicial Protection of Rights], claiming that the *"Legislation and creation of institutions, processes undertaken in Kosovo have not sufficiently processed specific needs of internally displaced persons in relation to their requests, and they have not provided the appropriate institutional framework."* The Applicant further alleges that since *"the justice system does not recognize specific obstacles that internally displaced persons face, the right to a fair trial and most of fundamental rights guaranteed by national law have become empty promises."* In a lengthy argument outlined in the Referral, the Applicant claims that being required to pay court fees is a hindrance on his right to equal access to courts.

The Applicant argues that there are typically three obstacles to court access: i) the use of the official language; ii) the court fee system; and iii) the *"factual impossibility to participate in the court proceeding"* for internally displaced persons. The Applicant argues that when dealing with a facially neutral law or institutional practice, discrimination can either be direct or indirect. The Applicant acknowledges that indirect discrimination before the courts is often more subtle than direct discrimination, but both are *"equally dangerous of principles of equal protection of rights."*

In citing the UN Human Rights Committee of the Ninetieth Session, General Comment No. 32, the Applicant points out that *"The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves*

*in the territory or subject to the jurisdiction of the State party. A situation in which an individual's attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14, paragraph 1, first sentence. This guarantee also prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The guarantee is violated if certain persons are barred from bringing suit against any other persons such as by reason of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."* (See para. 9 of General Comment No. 32 on Article 14 of the ECHR, http://www.refworld.org/docid/478b2b2f2.html).

16. The Applicant also alleges that the following Articles of the European Convention on Human Rights have been violated:

    a. Article 6, paragraph 1 [Right to Fair Trial] provides that *"In the determination of his civil rights and obligations . . . against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."* The Applicant argues that his right to a fair trial has been violated. In support of his allegation, the Applicant draws the Court's attention to several ECHR cases where such Article 6(1) violations have been addressed.

    In the case of Kutić v. Croatia, the ECHR held that the referral was admissible as to the issue of what is a reasonable time for which proceedings can be stayed. (See Kutić v. Croatia, no. 48778/99, 4 October 2001). In Golder v. The United Kingdom, the court rationalized the fact *"that the right of access constitutes an element which is inherent in the right stated by Article 6 para. 1, ... [which also] secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal."* (See Golder v. The United Kingdom, no. 4451/70, § 36, 21 February 1975).

    In further support of his arguments, the Applicant refers the Court to the case of Ashingdane v. The United Kingdom (See Ashingdane v. The United Kingdom, no. 8225/78, § 57, 28 May 1985), which held that *"[i]t must still be established that the degree of access afforded under the national legislation was sufficient to secure the individual's 'right to a court,' having regard to the rule of law in a democratic society."* In Airey v. Ireland, the ECHR notes that the purpose of the Convention is not to guarantee *"rights that are theoretical or illusory but rights that are practical and effective."* (See Airey v. Ireland, no. 6289/73, § 24, 9 October 1979). In the case of De Cubber v. Belgium, the ECHR determined that a restrictive interpretation of Article 6(1) *"would not be consonant with the object and purpose of the provision, bearing in mind the prominent place which the right to a fair trial holds in a democratic society within the meaning of the Convention."* (See De Cubber v. Belgium, no. 9186/80, § 30, 26 October 1984).

b. Article 13 [Right to an Efficient Legal Remedy] provides that *"Everyone whose rights and freedoms . . . shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."* The Applicant is arguing that based on the submitted facts, *"none of the supervising authorities of the responding party, or other authority, organization or authorized individual, did not find appropriate to react and remove from the justice system of the responding party this discriminating situation, with which for one group of Kosovo citizens, ethnically determined with their Serbian ethnical background, is practically impossible to protect their rights provided by the European Convention."* The Applicant clearly argues that because he is of Serbian, he has not been afforded equal treatment by the Kosovo authorities in seeking an effective legal remedy to his situation, as such seeking the assistance of the Court to resolve this matter.

The Applicant draws the Court's attention to Tolstoy Miloslavsky v. The United Kingdom where the ECHR determined that *"the right of access to the courts secured by Article 6 para. 1 may be subject to limitations in the form of regulation by the State . . . the State enjoys a certain margin of appreciation. However, the Court must be satisfied, firstly, that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the every essence of the right is impaired. Secondly, a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."* (See Tolstoy Miloslavsky v. The United Kingdom, no. 18139/91, § 59, 13 July 1995). In the Applicant's argument, he draws the Court's attention back to Kutić v. Croatia (which is a factually similar case to the Applicants: property destroyed in 1994 due to bombings, party is now seeking compensation for damages, court stayed proceedings indefinitely), where the ECHR held that the referral was admissible. (See Kutić v. Croatia, no. 48778/99, 4 October 2001).

By appearing to have done extensive research on the subject matter, the Applicant argues that *"the responding party has most crudely violated the rights of this referral's applicant pursuant to Article 6 of European Convention (the right to a fair trial) and the right pursuant to Article 13 of the European Convention on the protection of human rights and fundamental freedom (the right to an efficient legal remedy) and alternatively are violated the rights of the referral applicant provided in Article 8 of the European Convention (the right to home), Article 1 Protocol I of European Convention (the right to peacefully enjoy property) and there could also be implied the violation of the rights provided in Article 14 of the European Convention (prohibition of discrimination)."*

c. Article 8 [Right to Respect the Home] provides that *"(1) Everyone has the right to respect for his ... home ... (2) There shall be no interference by a public authority with the exercise of this right except such as is in*

*accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

The Applicant argues that, according to the facts presented in the Referral as evidence, *"the responding party with its actions has violated [his] ... right on the right to respect of home, which is guaranteed with Article 8 of the Convention. The responding party did not do anything to protect the property of the referral's applicant and the same."* The Applicant comes to the conclusion that since the respondents failed to protect his property and has subsequently been prevented from obtaining compensation for the property damage, he can only conclude that it has been done *"with the possible political goal of ethnic cleansing and prevention of the return."*

The Applicant argues that according to the ECHR in *Kroon and Others v. The Netherlands, "the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities ... [and a] fair balance ... has to be struck between the competing interests of the individual and of the community as a whole."* (See Kroon and Others v. The Netherlands, no. 18535/91, § 31, 27 October 1994). In determining whether there has been an Article 8 violation, the Applicant refers the Court's attention to the ECHR case, Niemetz v. Germany, which discuses the applicability of Article 8 with regards to a business. (See Niemetz v. Germany, no. 13710/88, §§ 30-31, 16 December 1992). The reason this is relevant to the Applicant's case is because the property in question was used as for profit and not just farmed for personal use.

In referring to the Sub-Commission (Resolution 1998/26) of Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, the Commission noted that the *"right of all returnees to the free exercise of their right to freedom of movement and to choose one's residence, including the right to be officially registered in their homes and places of habitual residence, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination."* Therefore, the Applicant argues that since he has this guaranteed right to use and enjoyment of his property, the respondents have violated this right by preventing him from receiving just compensation and ultimately in violation of Article 8 of the European Convention.

d. Protocol 1, Article 1 [Protection of Property] provides that *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law."* The Applicant argues

that under this Article, the following rights have been violated: the *"right ton peaceful enjoyment of property, and later (with its complete destruction) he was prohibited to peacefully enjoy his right due to the destruction of property (the right to material and immaterial damage compensation and the right to conduct the procedure for the protection of this right)."*

The Applicant therefore infers, by way of relying on the case of Loizidou v. Turkey where the ECHR states that *"by refusing her access to property 'has gradually, over the last sixteen years, affected the right of the applicant as a property owner and in particular her right to a peaceful enjoyment of her possessions, thus constituting a continuing violation of Article 1 [of Protocol I]* (See Loizidou v. Turkey, no. 15318/89, § 60, 18 December 1996; see also Report of the Commission of 8 July 1993, p. 21; Chrysostomos, Papachrysostomou and Loizidou v. Turkey, DR 68, p. 228).

e. Article 14 [Prohibition of Discrimination] provides that *"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, birth or other status."* The Applicant argues that for over eight (8) years he has not been able to *"realiz[e] [his] right to damage compensation due to the destruction of his homes, results in the violation of the right to peaceful enjoyment of the property, for which Republic of Kosovo is directly responsible."*

The ECHR in Pecevi v. FYR Macedonia determined *"that the State has a positive obligation to organize a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay. A delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1."* (See Pecevi v. The Former Yugoslav Republic of Macedonia, no. 21839/03, § 29, 6 November 2008; see also Fuklev v. Ukraine, no. 71186/01, §§ 83 and 84, 7 June 2005).

The Applicant also draws attention to the "Pinheiro Principles" established in The Housing and Property Restitution for Refugees and Displaced Persons Handbook. Principle 2 [The Right to Housing and Property Restitution] provides as follows: *"2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal. 2.2 States shall demonstrably priorities the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution."*

The Applicant additionally refers to Principle 21 [Compensation] of the Pineiro Principles, which states that *"21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation."* (http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

f. Protocol 12, Article 1 [General Prohibition of Discrimination] provides that *"(1) The enjoyment of any right set forth by law 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. (2) No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."*

The Applicant argues that under the principle of equality within Protocol 12 and throughout the European Convention, *"every party in the proceeding should have equal opportunities to present its arguments and that none of them cannot have any advantage in relation to its counterpart in the procedure."* The Applicant argues that he has not been afforded equal treatment and was subsequently discriminated against by having his claim withdrawn by the Municipal Court in Vushtrri.

In his argument, the Applicant concludes that under the European Convention for the Protection of Human Rights and Fundamental Freedoms a State must have an objective reason to prohibit him from seeking compensation for property damage. However, in this situation, the Applicant alleges that where *"a state that enables (consciously or unconsciously), respectively that is so badly organized that is not capable to prevent the stealing of the property that it has put under its rule, is responsible for the damage that has arisen as a result of that, and the question of its compensation by the real injurer cannot be put at the expense of the property owner and I would not want to come to conclusions on the intentions of acting bodies that had into consideration with that property, and how they acted towards the movable property of the applicant and similar."* The Applicant therefore asks the Court to consider the case of Veton Berisha and Ilfete Haziri: Constitutional Review of A.No.1053/2008 (See KI72/12, dated 7 December 2012), which held *"that the failure of the Supreme Court to provide clear and complete answers vis-à-vis crucial property submissions is in breach of the Applicants rights to be heard and right to a reasoned decision, as a component of the right to a fair and impartial trial."* (See KI72/12 at § 63).

## Admissibility of the Referral

17. In order to be able to adjudicate the Referral of the Applicant, the Court has to determine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.

18. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*

19. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

20. In this respect, the Court notes that the Municipal Court in Vushtrri considered the claim of the Applicant withdrawn on the basis that the Applicant failed to pay the court fees. Pursuant to Article 253(5) of the Law on Contested Procedure (LCP), provides that *"If the plaintiff doesn't pay the court tax determined for the claim even after the notice is sent by the court, through there are no reason for freeing the plaintiff from paying the tax, the claim will be considered as withdrawn."*

21. In the decision, the Municipal Court referenced the Administrative Instruction No. 2008/02 on Unification of Court Fees, Articles 3(1) and 10(1). Article 3(1) provides that *"Determining court fees, which should be paid at the time of filing an application, is done on the basis of the application's contest, actually nature of the application."* Article 10(1) provides a fee scale that relates to the amount in dispute for *"All the submissions in which the value of the claim is measurable, including any case related to monetary debts. Immovable or movable property, damages, contracts of monetary value, inheritance and civil execution of monetary debts."*

22. The Court of Appeal referred to Article 6.5 of the Administrative Instruction, which provides that *"If fees are not paid on the date they are due, the Court shall* provide *a notice to the person required to pay the fees, giving a final date by* which *all fees due, including the additional fee required under Sections 6.4 and 10.25 must be paid. In case these fees are not paid until the final deadline, the court will dismiss the application for which the respective fee was not paid."* Furthermore, the Court of Appeal held that the Municipal Court in Vushtrri has taken action in order to notify the Applicant, such as notifying the Ministry of Justice, Office for International Cooperation and it also held that the Applicant has not provided any evidence on why the Applicant should be exempted from paying the Court fee.

23. Therefore, the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness. Both the Municipal Court and the Court of Appeal dismissed followed the relevant rules and procedures and reasoned their decisions.

24. Therefore, pursuant to Rule 36 (1) c) of the Rules of Procedure, the Referral is inadmissible as manifestly ill-founded.

**FOR THESE REASONS**

The Constitutional Court, pursuant to Rule 36 (1) c) and Rule 56 (2) of the Rules of Procedure, on 3 February 2014, unanimously/by majority

**DECIDES**

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;

IV. TO DECLARE this Decision immediately effective.

**Judge Rapporteur** **President of the Constitutional Court**

Ivan Čukalović Prof. Dr. Enver Hasani