



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

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Pristina, on 4 December 2017  
Ref. No.: RK 1161/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 46/17**

Applicant

**Privatization Agency of Kosovo**

**Constitutional review of Judgment AC-I.-16-0084 of the Appellate Panel  
of the Special Chamber of the Supreme Court of Kosovo on Privatization  
Agency of Kosovo Related Matters of 14 December 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 is submitted by the Privatization Agency of Kosovo (hereinafter: the Applicant). In the proceedings before the Constitutional Court the Applicant is represented by Agron Kajtazi, Acting Head of Litigation Unit of the Legal Department of the Applicant.

## **Challenged decision**

2. The Applicant challenges Judgment AC-I.-16-0084 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 14 December 2015, in conjunction with Judgment C-I.-16-0001 of the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel), of 30 March 2016. The decision of the Appellate Panel was served on the Applicant on 15 December 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the abovementioned Judgment of the Appellate Panel, which, allegedly violated the Applicant's rights and freedoms guaranteed by Article 46 [Protection of Property] and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter Constitution).

## **Legal basis**

4. The Referral is based on Article 113 (7) and 116 (2) of the Constitution, Articles 22, 27 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 29 and 54 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 14 April 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 April 2017, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërzhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 27 April 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber).
8. On 07 September 2017, the Review Panel considered the report of the Judge Rapporteur and made a unanimous recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. It appears from the file that, in 1973, a Socially-Owned Enterprise (hereinafter: SOE) called "Sanitas", based in Montenegro, established a subsidiary company located in Peja, Kosovo.
10. On 29 December 1995, according to the registration in the Commercial Court of Podgorica, Montenegro, based on the legislation of Montenegro, the SOE

“Sanitas” was transformed into a Joint Stock Company (hereinafter JSC) called “Unifarm”, and the subsidiary company located in Peja, Kosovo, was included in that transformation.

11. On 2 February 2010, the company “Unifarm-Peja” requested the Applicant to confirm the status of this company as a private company.
12. The Applicant established a Review Commission to report on this Status Determination Request (SDR). The Review Commission’s report concluded that the company “Unifarm-Peja” had not been transformed into a JSC but was an SOE under Kosovo law and that, therefore, under article 5.1 of Law no. 04/L-034 on the Privatization Agency of Kosovo, the Applicant was authorized to administer the company “Unifarm-Peja” and its assets.
13. On 31 October 2013, the Applicant’s Board adopted the report of the Review Commission on the SDR.
14. On 21 or 25 November 2013, the Applicant informed the company “Unifarm-Peja” about its decision that the company was an SOE under administration of the Applicant.
15. In July 2014, the Applicant informed the company “Unifarm-Peja” that it would proceed to liquidate the company.
16. The company submitted a claim to the Special Chamber against the Applicant’s decision to liquidate. The company also sought an injunction against the liquidation. The injunction was granted by the Specialized Panel and confirmed by the Appellate Panel.
17. On 30 March 2016, the Specialized Panel (C-I.-16-0001) approved the claim and declared that, *“The decision of the [Applicant] to place the claimant under its administration is in breach of the law and affects the legal interest of the claimant, which is sufficient to nullify that decision.”*
18. The Specialized Panel reasoned that,

*“According to the allegations of the Claimant, that in essence have remained uncontested and are also in line with the findings of the Court, the SOE Unifarm in Peja with its assets, has been transformed, by privatization, to a joint stock company in the end of 1995. This has formally concluded a privatization procedure governed by the law of Montenegro. The natural consequence of this transformation would be that Unifarm Peja would no longer be an SOE, But retroactively, in 2002, UNMIK-regulation no, 2002/12 limits this by its article 5.3, which reads:*

*5.3 A subsequent transformation of an Enterprise into a different business organization form shall affect its status as a Socially-owned Enterprise only if such transformation either occurred before 22 March 1989 or, if it occurred thereafter, was:*

*(a) Based on Applicable Law; and*

*(b) Implemented in a non-discriminatory manner.*

*The transformation in Montenegro occurred after 22.03.1989, Hence the transformation affected, according the aforementioned provision of 2002, the status of the company only, if it was based on the applicable Law and was implemented in a non-discriminatory manner,*

*The retroactive denial of legal effects of this transformation would give rise to a number of legal issues, but those need not to be looked into, because the two conditions for acknowledgement of the transformation – firstly being based on the applicable law and secondly being implemented in a nondiscriminatory manner – are fulfilled. For the same reason it need not be discussed whether the powers of UNMIK included to override Law of Montenegro or was restricted to Law in Kosovo.”*

19. On 26 April 2016, the Applicant appealed to the Appellate Panel.
20. On 14 December 2016, the Appellate Panel (AC-I.-16.0084-A001) rejected the Applicant’s appeal and confirmed the decision of the Specialized Panel.

### **Applicant’s allegations**

21. The Applicant alleges that the challenged judgments violated the Applicant’s rights as protected by Article 102 (3) [General Principles of the Judicial System] of the Constitution because the Appellate Panel and the Specialized Panel applied the laws of Montenegro when adjudicating the case, whereas Article 102 (3) of the Constitution obliges the courts to apply only the Constitution and the laws applicable in Kosovo.
22. The Applicant alleges that the company “Unifarm-Peja” is an SOE under the law applicable in Kosovo, and therefore comes under the exclusive administration of the Applicant, as confirmed by the decision of the Applicant’s Board on 31 October 2013. The Specialized Panel and the Appellate Panel, when adjudicating the case, determined that the SOE had been transformed in 1995 into a Joint Stock Company and used the laws that applied in Montenegro in 1995 to justify their conclusion.
23. The Applicant alleges that the transformation in 1995 of the socially-owned company “Unifarm-Peja” into a Joint Stock Company is not valid under the laws applicable in Kosovo today, and that in reaching their decisions, the Specialized Panel and the Appellate Panel applied the laws of Montenegro, in violation of Article 102 (3) of the Constitution.
24. Specifically, the Applicant alleges that,

*“In Kosovo, in the period that the SOE claims to have been transformed into a Joint-Stock Company, in respect of transformation of property of a SOE or an asset of a SOE, the applicable law was Law No. 77/88 on Enterprises of SFRY, as amended and supplemented by Laws No. 40/89, 46/90 and 61/90 of SFRY. The Appellate Panel and the Specialized Panel*

*did not take this fact into consideration at all, and justify their decisions with the reasoning that this transformation took place in Montenegro, at the time when Yugoslavia existed, of which Kosovo was also a part, thus the transformation of this Unit in Peja of “Unifarm” from Podgorica, was made in conformity with the laws that had legal value at the place and time in question. Furthermore, the Appellate Panel and the Specialized Panel have failed to determine whether the correct procedures were followed under the laws applicable at that time.”*

25. Furthermore, the Applicant alleges that the challenged decisions violated its right to the protection of property, as guaranteed by Article 46 (1) [Protection of Property] of the Constitution, because, after 10 June 1999, the SOE no longer had a legal right to alienate socially-owned property within the territory of Kosovo, because, pursuant to UNMIK Regulation No. 2000/54, it is foreseen that UNMIK shall administer movable or immovable property which is in the territory of Kosovo, including finances, bank accounts and other properties, where UNMIK has reasonable and objective grounds to conclude that such property is socially-owned property.
26. The Applicant alleges that, under Law No. 04/L-034 on the Privatization Agency of Kosovo of 31 August 2011, the Applicant has exclusive powers to administer SOEs and their property.
27. The Applicant requests the Court to:
  - I. Declare the Referral of the Applicant admissible; and
  - II. Annul Judgment AC-I.-16-0084 of the Appellate Panel, of 14 December 2016, and Judgment C-I.-16-0001 of the Specialized Panel, of 30 March 2016.
28. The Applicant also requests the Court to impose Interim Measures to prevent the claimants to the SOE from alienating any property of the SOE, specifically to oblige “*Unifarm A.D. za medicisko snabdevanje sa p.o. Podgorica-Poslovna Jedinica Peć*”, to refrain from transferring parcel No. P-71611071-05092/1, Certificate No. -16 – 191313, CZ Peja, to third parties, until the Court renders a decision on this Referral.

## **Relevant Law**

29. The work and functions of the Applicant are regulated by Law No. 04/L-034 on the Privatization Agency of Kosovo of 31 August 2011, Articles 1, 2 and 5, which provide that,

### ***Chapter I – Legal Status, Purposes and Definitions***

#### ***Article 1 Establishment and Legal Status of the Privatization Agency of Kosovo***

*“1. The Privatization Agency of Kosovo (hereafter the “Agency”) is an independent public body that shall carry out its functions and responsibilities with full autonomy. The Agency shall possess full legal*

*personality and in particular the capacity to enter into contracts, acquire, hold and dispose of property and have all implied powers to discharge fully the tasks and powers conferred upon it by the present Law; and to sue and be sued in its own name.*

*2. The Agency is the successor of the Kosovo Trust Agency (KTA) that was established and regulated by UNMIK Regulation 2002/12 “On the establishment of the Kosovo Trust Agency and all assets and liabilities of the latter shall be assets and liabilities of the Agency.”*

## **Article 2 Objective and Purposes**

*“1. The Agency, in accordance with the terms of the present Law, shall have the authority to administer - which shall include the authority to sell, transfer and/or liquidate - Enterprises and Assets as defined under the present Law.*

*2. To serve this objective, the Agency shall:*

*2.1. until its sale or other disposition in accordance with the present Law hold and administer each Enterprise and Asset in trust for the benefit of the relevant Owners and Creditors in accordance with the present Law and other applicable provision(s) of the Law of Kosovo.*

*2.2. sell, transfer or liquidate Enterprises and Assets in accordance with Articles 6, 8 and 9 of the present Law, without undue delay;*

*2.3. carry out, within the limits of its administrative resources, reasonable ancillary activities to preserve or enhance the value, viability and governance of Enterprises and Assets, to the extent this does not unreasonably delay the performance of the duty set out in paragraph 2.2 above;*

*2.4. satisfy, in the manner and to the extent provided for in the present Law, valid claims that have been timely submitted by Creditors and Owners relating to an Enterprise or Asset from the Proceeds that have been derived from the sale, transfer, liquidation or other disposition of such Enterprise or Asset; for which purpose all such funds, with the exception of Residual Funds, shall be held in trust for the benefit of the relevant Owners and Creditors and preserved by the Agency;*

*2.5. after the expiry of the applicable time limits for the submission of concerned Owner and Creditor claims, identify and transfer – in accordance with Article 19.3 - all Residual Funds held in trust by the Agency to the Government of Kosovo;*

*2.6. perform such other tasks as may be assigned to it by the present Law and other applicable provision(s) of the Law of Kosovo.*

*3. The present Law shall be implemented in accordance with the principles set forth in the European Convention on Human Rights and its Protocols.”*

## **Chapter II – Tasks and Powers of the Agency**

### **Article 5 Enterprises and Assets Subject to the Administrative Authority of the Agency**

*“1. The Agency shall have exclusive administrative authority over:*

*1.1. socially-owned Enterprises, regardless of whether they underwent a Transformation;*

*1.2. any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially-owned property on or after 22 March 1989, except as provided in Article 5.1, paragraph 2, below; and*

*1.3. all shares in Corporations and subsidiary Corporations established pursuant to the present Law; and all State Owned Interests in an Enterprise or other legal entity, regardless as to whether the Enterprise or legal entity underwent a Transformation.*

*2. If a regulation or Law that is in force and that was promulgated by a competent public authority in Kosovo after 10 June 1999 assigns responsibility for administering assets described in Article 5, paragraph 1.2, to another public authority, the Agency shall not have authority over such assets as of the effective date of such regulation or Law.*

*3. The extent of the Agency’s administrative authority under 5 paragraph 1.1 shall extend to all property in the ownership or possession of an Enterprise, including property located outside of Kosovo; provided, however, that - notwithstanding its obligations set out in Article 2 paragraph 1 - with respect to such property located outside of Kosovo, the Agency is only required to exercise its authority over such property to the extent that the Agency deems such exercise reasonable, taking into account value and accessibility of such property and the limits of the Agency’s administrative resources as referred to in Article 7.1. In deciding on such matters, the Agency shall take into account any relevant policies that may be adopted by the Government or Assembly of Kosovo.*

*4. If an Enterprise underwent a Transformation, such Transformation shall not affect the authority of the Agency under Article 5.1 or 5.2 or the rights and powers of the Agency under Articles 6, 8 and 9 unless:*

*4.1. the Transformation was based on and carried out in full compliance with the Law applicable to the Transformation;*

*4.2. all obligations connected with the Transformation, whether arising concurrently with or subsequent to the Transformation, whether imposed by Law or contract - including but not limited to obligations requiring the payment of full consideration for, and the actual issuance of, shares - have been fully performed; and*

*4.3. the Transformation was neither discriminatory nor in breach of the principles of the European Convention on Human Rights.*

*5. In exercising its rights and powers under articles 6, 8 and 9 in respect of an Enterprise that underwent a Transformation, the Agency shall be entitled to assume that the Transformation does not meet all requirements set out in paragraph 4 above, unless clear evidence is readily available to the Agency, which conclusively establishes that the Transformation meets these requirements. In such case, paragraph 6 below shall apply.*

*6. If, in accordance with paragraph 5 above, the Agency finds that the Transformation of an Enterprise meets all requirements set out in paragraph 4, and the Agency has not previously completed an action with respect to such Enterprise or any of its Assets under Article 6.2, the following rules shall apply:*

*6.1. if clear evidence is readily available to the Agency, which conclusively establishes the allocation of shareholder (or ownership) rights over such Enterprise between social capital (or ownership) and private capital (or ownership), the Agency shall cease to exercise any authority over such Enterprise other than for the purpose of exercising all shareholder (or ownership) rights arising from the social capital (ownership) portion of the total capital of the Enterprise, which shall include the right to sell such shareholder (ownership) rights; and*

*6.2. In the absence of such evidence, the Agency shall continue to exercise its rights and powers under articles 6, 8 and 9 and the other provisions of the present Law over such Enterprise.*

*7. All matters related to or arising in connection with the liquidation of an Enterprise or Corporation pursuant to the Agency's authority under Article 6, paragraph 2.1, including but not limited to the determination of the validity of any claim made by an alleged Creditor or any assertion of equity or ownership interest made by an alleged Owner and the determination of appropriate distribution of Proceeds to Creditors and Owners - shall be the responsibility of the concerned Liquidation Authority, which shall comply with the rules established by Annex 1 of the present Law. Any person filing such a claim or alleging such an interest who disagrees with the Liquidation Authority's determination affecting that claim or alleged interest shall have the right to challenge such determination at the Special Chamber by timely complying with the procedural requirements set forth in Article 37.7 of Annex 1."*

### **Assessment of the Admissibility of the Referral**

30. The Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.



31. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes that,

*“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”*

32. The Court first considers that, pursuant to Article 21 (4) of the Constitution, which provides that *"fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable,"* the Applicant is entitled to submit a constitutional complaint, invoking fundamental rights which are valid for individuals as well as for legal persons (See, *mutatis mutandis*, Resolution of 27 January 2010, Referral KI41/09, AAB-RIINVEST University L.L.c., Pristina vs. Government of the Republic of Kosovo).

33. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.”*

34. The Court considers that the Applicant is an authorized party, has exhausted the available legal remedies and has submitted the Referral in due time.

35. However, the Court refers to Article 48 [Accuracy of the Referral] of the Law, which provides that,

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”*

36. In addition, the Court also refers to paragraphs (1)(d) and (2)(d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresee that,

*“(1) The Court may consider a referral if:*

*[...]*

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

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

*[...]*

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

37. The Court recalls that the Applicant alleges that the challenged decisions of the Appellate Panel and the Specialized Panel violated its rights under Article 102 (3) of the Constitution.

38. The Court recalls that article 102 (3) [General Principles of the Judicial System] states that,

*“3. Courts shall adjudicate based on the Constitution and the law.”*

39. The Court recalls that Article 102 of the Constitution falls within Chapter VII [Justice System] of the Constitution. As such, the Court considers that provisions of Article 102 of the Constitution do not contain individual rights and freedoms as protected by the provisions contained in Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution. Consequently, the Court finds that Article 102 cannot be relied upon in a Referral based on Article 113.7 of the Constitution.

40. However, the Court notes that the Applicant alleges that the Specialized Panel and the Appellate Panel violated its rights due to the manner in which they adjudicated on the case concerning the Applicant’s rights and obligations with respect to the company “Unifarm-Peja.”

41. Seen in this light, the Court considers that, in essence, the Applicant is complaining about a violation of its right to a fair and impartial trial in the determination of its rights and obligations. The Court recalls that the right to a fair trial is protected by Article 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6 (Right to a fair trial) of the European Convention on Human Rights (Hereinafter: the ECHR).

42. The Court recalls Article 31 (2) of the Constitution, which establishes:

*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.*

43. The Court also recalls Article 6 (1) of the ECHR, which in its relevant parts, establishes:

*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. [...].*

44. The Court is mindful of Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes that *“human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

45. In that connection, the Court reiterates the jurisprudence of the ECtHR which held, *mutatis mutandis*, that *“its jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and that it is not its function to take the place of the national courts, its role being rather to ensure that the*

*decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable.*” See ECtHR case *Anheuser-Busch Inc. v. Portugal*, Application No. 73049/01, Judgment of 11 January 2007, para. 83.

46. The Court also recalls that “[...] the [ECtHR] will not question the interpretation of domestic law by the national courts, save in the event of evident arbitrariness (see, *mutatis mutandis*, *Ādamsons v. Latvia*, no. 3669/03, § 118, 24 June 2008), in other words, when it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions and/or a denial of justice (see, *mutatis mutandis*, *Farbers and Harlanova v. Latvia (dec.)*, no 57313/00 6 September 2001, and, albeit in the context of Article 1 of Protocol No. 1, *Beyeler v. Italy [GC]*, no. 33202/96, para. 108, ECHR 2000-I).” See ECtHR case *Andjelković v. Serbia*, Application No. 1401/08, Judgment of 9 April 2013, para. 24.
47. In light of the above, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. See, *mutatis mutandis*, ECtHR case *García Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, para. 28.
48. The Court notes that in its Judgment, the Appellate Panel states that it did not apply the laws of Montenegro when adjudicating the Applicant’s case. Instead, the Appellate Panel reasoned that,

*“The issue in this contest is misleading because the issue at hand is not regarding the implementation of law of Montenegro in Kosovo, but for the recognition of the implementation of law of Montenegro (regarding the privatization) in Kosovo.”*
49. The Applicant alleges that the Appellate Panel has erroneously applied the law because it has not merely “recognized the implementation of law of Montenegro” but has, in fact, implemented the law of Montenegro when reaching its conclusion that the transformation of “Unifarm-Peja” to a Joint Stock Company was in accordance with law.
50. The Court recalls that Article 4 of the Law No. 04/L-034 on the Privatization Agency of Kosovo of 31 August 2011, allows for the transformation of SOEs into joint stock companies that have taken place between 22 March 1989 and 10 June 1999, provided this transformation complied with a certain number of criteria.
51. In the present case, the Court notes that the Specialized Panel and the Appellate Panel concluded that the transformation of “Unifarm-Peja” that took place in 1995 did comply with the legal criteria set in the Law No. 04/L-034 on the Privatization Agency of Kosovo. Both the Specialized Panel and the Appellate Panel provided reasons to support their interpretation of the law. As

such, the challenged decisions of the regular courts took account of the law as it applied to the Applicant's claims.

52. In these circumstances, the Court considers that the reasoning provided by the Specialized Panel and the Appellate Panel when deciding on the Applicant's claims are clear, comprehensive and coherent and that the proceedings before the regular courts have not been unfair or arbitrary. (See ECtHR Judgment of 30 June 2009, *Shub vs. Lithuania*, No. 17064/06).
53. Therefore, the Court concludes that the Applicant has not substantiated its allegation of a violation of its right to a fair and impartial trial as protected by Article 31 of the Constitution, and Article 6.1 of the ECHR.
54. The Court recalls that the Applicant also alleges a violation of its rights as protected by Article 46 (1) [Protection of Property] of the Constitution. The Applicant claims that, on the basis of Law no. 04/L-034, it has exclusive power to administer SOEs and their assets on the territory of Kosovo.
55. The Court recalls that Article 46 (1) of the Constitution provides that,  
*"1. The right to own property is guaranteed."*
56. The Court notes that Article 2 (1) of Law no. 04/L-034 provides the Applicant with the authorization to, "[...] *hold and administer each Enterprise and Asset in trust for the benefit of the relevant Owners and Creditors in accordance with the present Law and other applicable provision(s) of the Law of Kosovo.*"
57. As such, the Court notes that the Applicant's authority extends to the administration "in trust" for the actual owners of SOEs and their assets. The Applicant has not explained how this authority is equivalent to the right of "ownership" as guaranteed by Article 46 of the Constitution.
58. Therefore, the Court finds that the Applicant has not submitted any *prima facie* evidence nor has it substantiated its allegations indicating how and why the Appellate Panel has violated its right to own property as guaranteed by this provision.
59. In conclusion, the Court considers that the Applicant has not presented facts showing that the decisions of the regular courts have in any way caused a constitutional violation of its guaranteed rights under the Constitution.
60. Consequently, the Referral is manifestly ill-founded on a constitutional basis and it should be declared inadmissible pursuant to Rule 36, paragraphs (1) (d) and (2) (d), of the Rules of Procedure.

### **Request for Interim Measures**

61. The Court recalls that the Applicant has requested Interim Measures such that no assets of the SOE shall be alienated pending the decision of the Court on this Referral.

62. The Court recalls Rule 55 (4) (a) of the Rules of Procedure, which provides that,

*“(4) [...] Before the Review Panel may recommend that the request for interim measures be granted, it must find that:*

*(a) the party requesting interim measures has shown a prima facie case on the merits of the referral, and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral.”*

63. Having found that the Referral is manifestly ill-founded on a constitutional basis, the Court rejects the request for Interim Measures.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Article 113, paragraphs 1 and 7, of the Constitution, Article 46 of the Law, and Rules 36 (1)(d), (2)(d), and 55 (4)(a) of the Rules of Procedure, at its session held on 07 September 2017, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for Interim Measures;
- III. TO NOTIFY this Decision to the parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

Ivan Čukalović

**President of the Constitutional Court**

Arta Rama-Hajrizi

