



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

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Prishtina, on 27 November 2017  
Ref. No.: RK 1155/17

## RESOLUTION ON INADMISSIBILITY

in

Cases No. KI73/17, KI78/17 and KI85/17

Applicants

**Istref Rexhepi and 28 others**

**Constitutional review of 29 Decisions of the Supreme Court of Kosovo  
issued between 7 February and 20 March 2017**

**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.

### **The Applicants**

1. Referral KI73/17 has been submitted by 27 Applicants, namely: Istref Rexhepi, Lulferet Hoxha, Aziz Balaj, Azem Velju, Adem Velju, Mehmet Buzhala, Latif Shaqiri, Elfije Gashi, Ilaz Ahmeti, Enver Hamza, Bajram Salihu, Bahtir Geci,

Shaqir Bejta, Halil Sejdiu, Florim Haliti, Sherife Halili, Lah Sahiti, Naser Rama, Halim Meha, Asllan Bajra, Zymer Halilaj, Sadik Ahmeti, Abaz Avdiu, Ahmet Hoti, Muhamet Gashi, Januz Gashi, and Enver Mëziu, represented by Jahir Bejta, Director of NGO “Ngritja e Zërit”, with residence in Skenderaj.

2. Referral KI78/17 has been submitted by Behram Kajtazi.
3. Referral KI85/17 has been submitted by Sokol Goxhuli. All the above (hereinafter: the Applicants) are with residence in Skenderaj.

### **Challenged decisions**

4. The Applicants challenge 29 decisions of the Supreme Court of the Republic of Kosovo (hereinafter, the Supreme Court) as follows:
  1. Istref Rexhepi - Decision No. Rev 430/2016 of 16 February 2017, served on him on 16 March 2017;
  2. Lulferet Hoxha - Decision No. Rev 387/2016 of 08 February 2017, served on her on 11 April 2017;
  3. Aziz Balaj - Decision No. Rev 414/2016 of 13 February 2017, served on him on 15 March 2017;
  4. Azem Veliu - Decision No. Rev 432/2016 of 8 February 2017, served on him on 15 March 2017;
  5. Adem Veliu - Decision No. Rev 420/2016 of 16 February 2017, served on him on 15 March 2017;
  6. Mehmet Buzhala - Decision No. Rev 421/2016 of 7 February 2017, served on him on 25 February 2017;
  7. Latif Shaqiri - Decision No. Rev 386/2016 of 7 February 2017, served on him on 28 February 2017;
  8. Elfije Gashi - Decision No. Rev 390/2016 of 16 March 2017, served on her on 16 March 2017;
  9. Ilaz Ahmeti - Decision No. Rev 391/2016 of 7 February 2017, served on him on 28 February 2017;
  10. Enver Hamza - Decision No. Rev 392/2016 of 8 February 2017, served on him on 15 March 2017;
  11. Bajram Salihu - Decision No. Rev 396/2016 of 7 February 2017, served on him on 3 March 2017;
  12. Bahtir Geci - Decision No. Rev 427/2016 of 9 February 2017, served on him on 15 March 2017;
  13. Shaqir Bejta - Decision No. Rev 407/2016 of 8 February 2017, served on him on 15 March 2017;
  14. Halil Sejdiu - Decision No. Rev 411/2016 of 7 February 2017, served on him on 2 March 2017;
  15. Florim Haliti - Decision No. Rev 397/2016 of 8 February 2017, served on him on 25 March 2017;
  16. Sherife Halili - Decision No. Rev 419/2016 of 16 March 2017, served on her on unspecified date;
  17. Lah Sahiti - Decision No. Rev 429/2016 of 16 March 2017, served on him on unspecified date;
  18. Naser Rama - Decision No. Rev 424/2016 of 16 March 2017; served on him on unspecified date;

19. Halim Meha - Decision No. Rev 401/2016 of 7 February 2017, served on him on 28 February 2017;
20. Asllan Bajra - Decision No. Rev 406/2016 of 7 February 2017, served on him on 28 February 2017;
21. Zymer Halilaj - Decision No. Rev 422/2016 of 8 February 2017, served on him on 24 March 2017;
22. Sadik Ahmeti - Decision No. Rev 409/2016 of 13 February 2017, served on him on 11 April 2017;
23. Abaz Avdiu - Decision No. Rev 394/2016 of 7 February 2017, served on him on 28 February 2017;
24. Ahmet Hoti - Decision No. Rev 433/2016 of 16 February 2017, served on him on 16 March 2017;
25. Muhamet Gashi - Decision No. Rev 410/2016 of 16 February 2017, served on him on 16 March 2017;
26. Januz Gashi - Decision No. Rev 412/2016 of 8 February 2017, served on him on 16 Mars 2017;
27. Enver Mëziu - Decision No. Rev 425/2016 of 16 February 2017, served on him on 15 Mars 2017;
28. Behram Kajtazi - Decision No. Rev 398/2016 of 20 March 2017 served on her on unspecified date; and,
29. Sokol Goxhuli - Decision No. Rev 416/2016 of 7 February 2017, served on him on 10 February 2017.

### **Subject matter**

5. The subject matter of the Referrals is the constitutional review of the challenged decisions which allegedly violated the rights of the Applicants guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions], and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 6 (Right to a Fair Trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter, UDHR).

### **Legal basis**

6. The Referrals are based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

### **Proceedings before the Court**

7. On 23 June 2017, 27 Applicants submitted Referral KI73/17 to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

8. On 28 June 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
9. On 5 July 2017, the Applicant Behram Kajtazi submitted Referral KI78/17 to the Court.
10. On 7 July 2017, in accordance with the Rule 37.1 of the Rules of Procedure, the President of the Court ordered joinder of Referral KI78/17 with Referral KI73/17. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel would be the same as it was decided by the President on appointment of the Judge Rapporteur and the Review Panel on 28 June 2017.
11. On 17 July 2017, the Court notified the Applicants of the registration and joinder of the Referrals and requested additional documents to be provided to the Court.
12. On the same day, the Court sent a copy of the Referrals to the Supreme Court and sent a request to the Basic Court in Mitrovica-Branch in Skenderaj (hereinafter, the Basic Court) to submit evidence on the date of receipt by twenty-two (22) Applicants of their challenged decisions of the Supreme Court.
13. On 21 July 2017, the Court received from the Applicants some of the documents requested by it on 17 July 2017.
14. On the same day, the Court sent a copy of the additional documents to the Supreme Court and sent a request to the Basic Court to submit the receipts of the date on which the two (2) Applicants received the challenged decisions of the Supreme Court that were not attached to the Referral.
15. On 24 July and 11 August 2017, the Basic Court delivered to the Court the receipts showing the dates when twenty-two (22) Applicants received the challenged decisions as requested by the Court on 17 July 2017.
16. On 27 July 2017, Applicant Sokol Goxhuli submitted Referral KI85/17 to the Court.
17. On 28 July 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of the judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
18. On 4 August 2017, the Court received from the Applicants the additional documents requested by it on 17 July 2017.
19. On 7 August 2017, the Basic Court delivered to the Court the receipts showing the date the two (2) Applicants received the challenged decisions as requested by the Court on 21 July 2017.
20. On the same day, in accordance with the Rule 37.1 of the Rules of Procedure, the President of the Court ordered joinder of Referral KI 85/17 with Referrals KI73/17 and KI78/17. By this order, it was decided that the Judge Rapporteur

and the composition of the Review Panel would be the same as it was decided by the President on appointment of the Judge Rapporteur and the Review Panel on 28 June 2017.

21. On 15 August 2017, the Court notified the respective Applicants of the registration of Referral KI85/17 and its joinder with Referrals KI73/17 and KI78/17.
22. On the same day, the Court sent a copy of Referral KI85/17 to the Supreme Court and notified the Supreme Court of the joinder of the Referrals.
23. On 23 October 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referrals.

### **Summary of facts**

24. Between 17 May 2010 and 23 October 2014, the Applicants, individually, filed claims with the Basic Court against the Government of the Republic of Serbia for compensation for material and non-material damages caused to them between 1998 and 1999.
25. Between 12 July 2013 and 2 March 2015 the Basic Court, by individual decisions, dismissed the claims of the Applicants and declared itself incompetent to decide.
26. The Applicants appealed the decisions of the Basic Court with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) due to essential violations of the provisions of the contested procedure. The Applicants requested that the decisions of the Basic Court be amended and the claims of the Applicants be declared admissible.
27. Between 12 May 2015 and 14 June 2016, the Court of Appeals issued separate decisions rejecting as ungrounded each of the appeals of the Applicants and confirmed the decisions of the Basic Court.
28. Each of the Applicants filed separate requests for revision with the Supreme Court due to essential violation of the provisions of the contested procedure. They requested the revisions to be approved, the decisions of the Court of Appeals and Basic Court be annulled and the matter be referred for re-consideration by the Basic Court.
29. Between 7 February 2017 and 20 March 2017, the Supreme Court issued separate decisions rejecting the revisions of each of the Applicants as ungrounded. The Supreme Court in each of its decisions argued along the following lines:

*“Taking into consideration [provisions of the Law on Contested Procedure] LCP and the fact that as respondent by the claim for damage compensation appears the Republic of Serbia – the Government of the RS in Belgrade, [...] in this specific case it is about a property dispute with a foreign country and provisions of the international law shall apply, and the local courts have no*

*jurisdiction over these contests, the Supreme Court of Kosovo considers that the [Basic Court and the Court of Appeals] have correctly applied provisions of Article 18.3 and Article 39, paragraph 1 and 2 of LCP when they have declared to have no jurisdiction over this legal matter and have dismissed the [Applicants'] claims because, the general territorial jurisdiction is with the court in whose territory is the seat of the Assembly of the Republic of Serbia, [and] the seat of the Assembly of the Republic of Serbia as respondent, is not located in the territory of the courts of Kosovo.*

*[...]*

*provisions of Article 28 of LCP, which the [Applicants] referred to, by which is determined jurisdiction of [Kosovo] courts in contests with international (foreign) elements, cannot apply in this specific case because here we are not dealing either with foreign natural persons or with foreign legal persons but with a foreign country with whom, until this date, the state of Kosovo in whose territory was caused the damage, did not conclude any international (mutual) agreement on jurisdiction of local courts related to this kind of contests.*

*Also, in this specific case, the allegations of the [Applicants'] revision concerning territorial jurisdiction [provided in Articles 47, 51 and 61] of LCP, are ungrounded as, according to assessment of [Supreme Court], these provisions have nothing to do with this specific concrete case [...], the first instance court has correctly applied provisions of Article 18.3 of LCP also taking into consideration other reasons stated above.”*

### **Applicants' allegations**

30. The Applicants claim that the Supreme Court decisions violated their rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions], and 54 [Judicial Protection of Rights] of the Constitution, Article 6 (Right to a Fair Trial) of the ECHR and Article 15 of the UDHR.
31. The Applicants allege that the regular courts “*have erroneously interpreted the applicable law when referring to the territorial jurisdiction of the Basic Court [...], because the court in the territory of which was committed the crime, moral namely material damage, is always the territorially competent court for adjudicating legal matters! This definition and valid legal stance also coincides with the interest of injured party and the principle of economy in judicial and administrative proceedings and international principle - per loci.*”
32. The Applicants further state that they were not “*given the possibility to have their cases decided in legal proceedings based on the applicable laws of Kosovo, the Constitution [...] and best judicial practices from the region.*”
33. The Applicants, referring to Article 21 paragraph 1 of the Constitution, claim that the regular courts “*have not applied the advanced international standards for human rights. One of those standards is the possibility the injured party to initiate a procedure for moral and material compensation as a result of direct actions of Serbian authorities*”.

34. The Applicants, referring to Article 54 of the Constitution, also state that *“they were denied the right for judicial protection of rights, rights for access to justice at national level as well as institutional guarantees for protection of human rights”*.
35. The Applicants refer to examples that have allowed the victims of World War II *“to submit individual claims before national courts for compensation of damages caused by Germany”*. In this regard they specify that in the cases of Greece, Italy and United States of America, individuals were given a possibility to claim compensation for *“damages caused by Germany during World War II in accordance with international principle “per loci”*.”
36. In addition to all other Applicants, Applicant Sokol Goxhuli (KI85/17), with regard to the deadline of four (4) months for submitting the Referral before the Court, requests to return the deadline to the previous situation, in accordance with Article 50 [Return to the Previous Situation] of the Law, stating that *“from 10.02.2017 he has been accompanying his wife [...] who was taking medical care for cancer disease in France”* and thus, could not submit the Referral within the foreseen deadline of four (4) months.

### **Admissibility of the Referrals**

37. The Court first will examine whether the Referrals fulfil the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
38. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:
  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.*
39. The Court also refers to Articles 49 [Deadlines] and 50 [Return to the Previous Situation] 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.*

[...]

*If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous*

*situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired.”*

### **With regard to 28 Applicants**

40. The Court considers that the 28 Applicants, not including Sokol Goxhuli whose case will be dealt separately, are authorized parties, they have exhausted the available legal remedies and they have submitted the Referrals in due time.
41. However, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which provides:
- 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.*
42. 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:
- (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.*
43. In that respect, the Court recalls that the Applicants claim that the regular courts violated numerous rights protected by the Constitution, the ECHR and UDHR, mainly pertaining to right to a fair and impartial trial and judicial protection of rights.
44. In this respect, the Court notes that the Applicants allege that the regular courts have erroneously interpreted the applicable law when referring to the territorial jurisdiction of the Basic Court claiming that the court in the territory of which damage was caused is the competent court for adjudicating their legal matters.
45. The Court considers that the Applicants’ allegations essentially pertain to interpretation by regular courts of procedural provisions regarding their territorial jurisdiction and competence to deal with the claims of the Applicants.
46. The Court emphasizes that it is not its task to deal with errors of fact or law allegedly committed by the regular courts when establishing facts 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*, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 28).



47. The complete determination of factual situation and the correct application of the law is in the jurisdiction of the regular courts (matter of legality). Therefore, the Constitutional Court cannot act as a “fourth instance court” (see: ECtHR Judgment of 16 September 1996, *Akdivar v. Turkey*, No. 21893/93, para. 65; see also, *mutatis mutandis*, Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
48. The Court notes that the Supreme Court assessed the interpretation of the Court of Appeals and the Basic Court of procedural provisions regarding their competence to deal with the claims of the Applicants.
49. The Supreme Court when dealing with the allegations of the Applicants reasoned that the Basic Court and the Court of Appeals have correctly applied provisions of Article 18, paragraph 3 and Article 39, paragraph 1 and 2 of the Law on Contested Procedure when they have declared to have no jurisdiction over these legal matters. Accordingly, the Supreme Court dismissed the Applicants’ claims because the general territorial jurisdiction is with the court on whose territory is the seat of the Assembly of the Republic of Serbia and that is not located on the territory of the courts of Kosovo.
50. The Supreme Court further specified that in the case of the Applicants, “*we are dealing with foreign country with whom, until this date, Kosovo, in whose territory was caused the damage, did not conclude any international (mutual) agreement on jurisdiction of local courts related to this kind of contests.*”
51. The Court considers that the conclusions of the Basic Court, Court of Appeals and the Supreme Court were reached after a detailed examination of all arguments submitted by the Applicants. In this way, the Applicants were given the opportunity to present at all stages of the proceedings the arguments and evidence which they consider relevant to their cases.
52. All the arguments of the Applicants, which were relevant to the resolution of the dispute, were heard and properly reviewed by the courts. All material and legal reasons related to the challenged decisions were presented by the Applicants in detail and the Court concludes that the proceedings before the regular courts, viewed in their entirety were fair (See, *mutatis mutandis*, ECHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 29 and 30).
53. The mere fact that the Applicants are not satisfied with the outcome of the decisions of the Supreme Court or the mentioning of articles of the Constitution is not sufficient to build an allegation for a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and compelling arguments. (See, *mutatis mutandis*, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, KI 136/14, paragraph 33).
54. In sum, the Court considers that the Applicants have not presented evidence, facts and arguments showing that the proceedings before the regular courts presented in any way a constitutional violation of their guaranteed rights under the Constitution namely, Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation

of Human Rights Provisions], and 54 [Judicial Protection of Rights] of the Constitution, Article 6 of the ECHR or Article 15 of the UDHR.

**With regard to the Applicant Sokol Goxhuli**

55. The Court considers that Applicant Sokol Goxhuli (KI85/17) is an authorized party and has exhausted the available legal remedies.
56. However, the Court notes that the Applicant declares that he has received the contested Decision of the Supreme Court No. Rev 416/2016 on 10 February 2017, while he submitted the Referral (KI85/17) before the Court on 27 July 2017. Therefore, the Court considers that his Referral was submitted after the deadline of four (4) months.
57. In this regard, the above Applicant requests the Court to return the deadline to the previous situation, in accordance with Article 50 of the Law, stating that *“since 10.02.2017 he has been accompanying his wife [...] who was undertaking medical examination for cancer disease in France”*. Thus, taking into account the above reason *“he hopes that the Court will approve his request for return to the previous situation”*.
58. To support his arguments, the Applicant submitted evidence since when his wife was registered for medical examinations in France.
59. However, the Applicant did not provide evidence since when his wife returned from medical examinations in France, whether the Applicant accompanied her during this travel, and if so, how this situation resulted in his inability to submit the referral before the Court or to authorise a representative to submit the Referral before the Court on his behalf. In addition, the Applicant did not provide evidence showing that the Referral was filed within 15 days from the elimination of the obstacles justifying the request for return to the previous situation as requested by Article 50 of the Law.
60. Therefore, the Court concludes that the Applicant did not substantiate his claim for a return of the deadline to the previous situation in accordance with Article 50 of the Law and thus, his request is to be rejected.
61. The Court recalls that the purpose of the 4 (four) month legal time limit under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenge (See case of *o' Loughlin and Others v. the United Kingdom* no. 23274/04, ECtHR Decision of 25 August 2005 and see case no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 17 March 2014, paragraph 24).
62. Based on the foregoing, it results that the Referral (KI85/17) of Applicant Sokol Goxhuli was submitted out of legal time limit stipulated by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such is inadmissible.

63. Consequently, the Referrals:

*i)* regarding all 28 Applicants the Referrals (KI73/17 and KI78/17) are manifestly ill-founded on constitutional basis and should be declared inadmissible pursuant to Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure; and

*ii)* with regard Applicant Sokol Goxhuli (KI85/17) his Referral was submitted out of the legal time limit stipulated by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such is inadmissible;

**FOR THESE REASONS,**

The Constitutional Court of Kosovo, in accordance with Article 113 (1) and (7) of the Constitution, Articles 48, 49 and 50 of the Law and Rules 36 (1) (c) 36 (1) (d), 36 (2) (d) of the Rules of Procedure, in the session held on 23 October 2017, unanimously

**DECIDES**

- I. TO DECLARE the Referrals 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; and
- IV. TO DECLARE this Decision effective immediately;

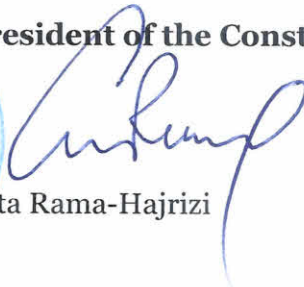
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi