



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT  
SEKRETARIA / SEKRETARIJAT / SECRETARIAT

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Prishtina, on 25 October 2017

## **Speech of the President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi**

I am deeply honored and it is my pleasure to open the solemn ceremony of this new judicial year on behalf of the Constitutional Court of the Republic of Kosovo.

First of all, I would like to greet and thank for their participation in marking the 8<sup>th</sup> anniversary of our Court, the highest-rank representatives of the institutions of the Republic of Kosovo, international representatives and diplomats accredited in the country, in particular I would like to greet the delegations from the region, who have honored us with their presence at the ceremony: delegations of the Constitutional Court and the Supreme Court of the Republic of Albania, Turkey, Bulgaria, Macedonia, Montenegro, and Croatia, the judges of the regular courts and prosecutors of the Republic of Kosovo and others present.

Your participation in this ceremony adds to the importance that this anniversary has for us, obliging us to cultivate further the relations of friendship, cooperation and mutual respect.

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As a new state, Kosovo faces numerous challenging processes and is in a constant struggle to consolidate and advance the democracy, strengthen the rule of law and economic development, and it is committed toward integration processes. These challenges are not only of a political nature but also of an economic, social and legal nature. However, the same challenging situation is also reflected in the daily work and practice of the Constitutional Court, which since its establishment, through its decisions has been part of these processes and has contributed to the efforts to overcome them.

The Constitutional Court, in accordance with the mandate and powers set forth by the Constitution of Kosovo and other legal acts, continues to create its case law, which in some areas of constitutional adjudication now can be freely called a consolidated case law. It is worth mentioning the so-called individual cases which are related to the protection of human rights and fundamental freedoms guaranteed by

the Constitution and the European Convention on Human Rights and further developed and interpreted by the case law of the European Court.

The establishment and development of this case law is of a multiple importance. First of all, it has become an important assistance for the applicants and their representatives, having a direct impact on drafting more professional and quality submissions.

Furthermore, this contributes highly to strengthening the principle of legal certainty and an adequate and stable system of protection of human rights and fundamental freedoms of the citizens of our Republic, resulting in the implementation of our Constitution in practice with all its attributes as the highest legal act of the country.

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The binding character of decisions of the Constitutional Court and the importance and effect that they have, not only on the parties, often attract the attention of the public opinion and become a subject of public discussions and debates. Not rarely, such debates and evaluations are made on other basis and motives rather than professional ones.

Among other things, I can mention the election processes of which the establishment of national or local institutions was expected, resulting in situations where the Constitutional Court has been asked to interpret constitutional norms and addressing such referrals has sparked increased attention to the public at large.

In democratic states, the political issues no matter how complicated they might be, are resolved and should be resolved with political tools and instruments, whereas the legal issues no matter how complex and complicated, are resolved by legal means and by the relevant institutions. It is not good and is not healthy for democracy if the political issues and problems are always tried to be solved by legal means, because as such they can become an obstacle to democratic developments. For example, the Constitutional Court should not be seen at the end of each electoral process, as an ARBITER of the election results and it is not good that the Constitutional Court is perceived as determinant of the institutions emerging from the elections. The Court will not play that role nor does it have that task. In this regard, it would be desirable that except in the cases where the situations of the “constitutional conflict” clearly appear, the Constitutional Court is not to be included at all. Naturally, that does not mean that the Court has hesitated and will never hesitate to address any case that is filed, including the cases related to election processes, when they are within its competencies.

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Let me continue to share with you some of the most important decisions taken by the Court during this Judicial Year, which aroused a great interest of the opinion, and not only local one.

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Two of these decisions are undoubtedly the case of the Constitutional Review of the Law on Trepça as well as of the Law on Strategic Investments.

Both cases were filed by a number of the deputies of the Assembly of Kosovo representing non-majority communities in the Assembly. In both cases the laws were also challenged in the procedural aspect, claiming that the laws in question enter the group of laws with “vital interest”, as well as in a substantive aspect, claiming a violation of the property rights.

After having carefully reviewed the cases, the Court found that the objective of the Law on Trepça and of the Law on Strategic Investment is to improve economic development, employment, and the application of new technologies in order to increase the competitive abilities of the enterprise and of Kosovo. The Court found that the proposed benefits of the Law on Strategic Investments are not limited to one or another community but are of general public interest and aim at the well-being of the whole society, and accordingly it decided that these two laws are constitutional as regards the substance and the procedure followed for their adoption by the Assembly of the Republic of Kosovo.

It is worth mentioning that, in particular regarding the “Trepça” case, many public debates took place, some of which even exceeded the geographic space of our state. Naturally, same as in other cases, the Constitutional Court did not become a polemical party in this situation, but based on constitutional competencies and in its case law, and after the comparative research, rendered a meritorious decision.

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Only an independent and impartial constitutional court can enjoy the full trust of both the parties and citizens in general. In fact, this should not only be a feature of the Constitutional Court but also of all other institutions defined as independent by the Constitution.

Regarding this question, the Constitutional Court had admitted for review the case KO 73/16 filed by the Ombudsperson Institution, which challenged the constitutionality of an administrative act of the Ministry of Public Administration (MPA), which according to the Ombudsperson, violated the constitutional independence not only of the institution he represents, but also of other independent constitutional institutions, including the Constitutional Court.

The Court assessed the Applicant's allegations, posed questions for similar cases to the member countries of the Venice Commission, consulted its previous case law and after thoroughly examining the case and analyzing the responses received from nine member states of the Venice Commission, it found that that the administrative act of the MPA by its contents, violates the constitutional independence of independent constitutional authorities, and in particular, the Constitutional Court and the Ombudsperson.

On this occasion, the Court did not deny the Government's power to unify the job titles and the rank of civil servants, but emphasized the fact that any such initiative that is not done in consultation with the relevant institutions and does not take into account the specifics and constitutional guarantees for the independence of independent institutions will be counter-constitutional. The independence of the independent institutions as guaranteed by the Constitution of the Republic of Kosovo, cannot be reduced to any other legal act with legal power that is lower than the Constitution itself.

Thus, the Court concluded that the independence of the independent institutions guaranteed by the Constitution is not only functional, but also organizational and financial. In fact, their impartiality depends on this independence.

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I have presented before you some of the most important decisions of the last year. Now, allow me to present before you to some of the challenges we faced or which await us in not so distant future.

At the ceremony last year, thanking Judge Carolan, who resigned from the Court, at the same time I appealed for the Assembly to fill the vacant position that remained, in the shortest possible time. We are still awaiting the fulfillment of that position and this call remains current.

But, next year our Court expects an even greater challenge for its functioning, when the mandate of four other judges is also expected to end.

I would like to draw attention to the fact that if the process of replacing judges will not take place within the deadlines provided by the Constitution, the Constitutional Court risks losing the necessary majority for decision making. A dysfunctional Constitutional Court also jeopardizes the very foundations of the existence and rule of law in a country.

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Last years, changes in the Kosovo judiciary system and in general in the justice system in the country have been numerous and positive. The Constitutional Court has undergone a continuous process of building professional capacities and organizational reform, mainly thanks to precious assistance of our international partners.

In this regard, for continuous financial support and for the generous help they have offered to the Constitutional Court over the years, I would like to thank in particular for the contribution of the German state through GIZ, IRZ and the Council of Europe Office in Kosovo.

Special thanks to one of main supporters to our Court, the US State that through USAID that this year provided valuable support in amending the Rules of Procedure of the Court and redesigning the Court's official website, which by the standard and quality of search of decisions is expected to be among the most advanced constitutional courts websites, not just in the region. This investment will definitely affect the further enhancement of the Court's transparency to the public.

Finally, let me express my sincere gratitude to all my colleagues, the Deputy President and all other judges, without whom the successes of the Constitutional Court would undoubtedly be deficient.

For their tireless and highly professional work, in the end, I would like to thank the Secretary General, Legal Advisors, my Cabinet and all the administrative staff of the Constitutional Court.

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