



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 4 June 2018

Ref. No.: RK 1242/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI68/17**

Applicant

**Hysni Bytyqi**

**Request for constitutional review of Decision Rev. No. 39/2017 of the Supreme Court of 20 April 2017 and Decision Ac. No. 2477/2015 of the Court of Appeals of 31 October 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 was submitted by Hysni Bytyqi from village Semetishtë, Municipality of Suva Reka, residing in London, England (hereinafter: Applicant).

## **Challenged decision**

2. The Applicant challenges Decision Rev. No. 39/2017 of the Supreme Court of 20 April 2017, in conjunction with Decision Ac. No. 2477/2015 of the Court of Appeals of 31 October 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the above-mentioned decisions of the Supreme Court and of the Court of Appeals, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

4. The Referral is based on Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

5. On 9 June 2017, the Applicant submitted the Referral to the Court.
6. On 9 June 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Arta Rama-Hajrizi
7. On 3 July 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 19 April 2018, 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. Based on the case file, it follows that on 20 May 2013, the Applicant met with person S.S., namely a lawyer, in order to get acquainted with the course of the proceedings in which he had personal interest. During their conversation, the S.S allegedly insulted the Applicant verbally.
10. On 25 October 2013, the Applicant filed a lawsuit against S.S. with the Basic Court in Prizren - Branch in Suhareka (hereinafter: the Basic Court) for compensation of non-material damage due to insult and defamation.



11. On 2 March 2015, the Basic Court rendered Judgment C. No. 412/13, which partially adopted the Applicant's statement of claim, obliging the respondent S.S. to pay a certain amount of money plus penalty interest as compensation for non-material damage due to defamation and insult.
12. The respondent S.S. filed an appeal with the Court of Appeals against Judgment C. No. 412/13 of the Basic Court, on the grounds of essential violations of legal provisions, erroneous determination of the factual situation and erroneous application of substantive law.
13. On 30 October 2016, the Court of Appeals rendered Decision Ac. No. 2477/2015, which annulled Judgment C. No. 412/13, of the Basic Court, because the original lawsuit for insult and defamation had been submitted out of time. The reasoning of the Decision of the Court of Appeals reads:

*“Based on this situation of the matter, the Court of Appeals found that the first instance court acted contrary to the above-mentioned legal provisions, and in particular contrary to the provision of Article 17 para.1 of the Civil Law against Defamation and Insult (Law No. 02/L-65) which explicitly provides that “The limitation period for filing a request for compensation under this Law is three (3) months from the day that the allegedly injured person knew or should have known of the expression and the identity of the author, and shall in any event not exceed one (1) year from the day that the expression was made public”. In the present case according to the case file, it results that the allegation of defamation was made on 20.05.2013, whilst the claim as per this allegation was submitted at the Basic Court in Prizren-Branch in Suhareka on 25 October 2013, thus it results that the claimant's claim is untimely, and for this reason it was dismissed by the Court of Appeals.”*

14. The Applicant submitted a request for revision to the Supreme Court against Decision Ac. No. 2477/2015 of the Court of Appeals.
15. On 20 April 2017, the Supreme Court rendered Decision Rev. No. 39/2017, which rejected the Applicant's request for revision as ungrounded. The reasoning of the Supreme Court Decision, among other things, reads:

*“According to the assessment of this court, the challenged decision of the Court of Appeals does not contain any flaws that would affect the legality of the decision. As the second instance court, this court also considers that the claimant missed the deadline for judicial protection for the alleged defamation under Article 17, paragraph 1 of the Civil Law Against Defamation and Insult (Law No. 02/L-65).”*

### **Applicant's allegations**

16. The Applicant alleges that *“the decisions of the Court of Appeals and the Supreme Court were affected by serious breaches of the provisions of the contested procedure [...]”*
17. The Applicant further alleges that the Court of Appeals and the Supreme Court erroneously concluded that the insult, namely the delinquent action, was committed

by the respondent S.S. on 20 May 2013, although it is true that on 20 May 2013 the respondent S.S. began with insults and defamations, but he continued to insult the Applicant in the period thereafter.

18. The Applicant alleges that the decisions of the Court of Appeals and Supreme Court violated his rights and freedoms guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.
19. The Applicant requests the Court to declare unconstitutional Decision Ac. No. 2477/2015 of the Court of Appeals and Decision Rev. No. 39/2017 of the Supreme Court and accordingly to annul them.

### **Assessment of the admissibility of Referral**

20. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution and further specified in the Law and the Rules of Procedure.
21. 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”.*

22. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

#### **Article 48 [Accuracy of the Referral]**

*“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.”*

#### **Article 49 [Deadlines]**

*„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...”.*

23. Regarding the fulfillment of these requirements, the Court finds that the Applicant filed a referral in the capacity of an authorized party, challenging an act of a public



authority, namely Judgment Rev. No. 39/2017 of the Supreme Court, after exhaustion of all legal remedies. The Applicant also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines of Article 49 of the Law.

24. However, the Court should further assess whether the requirements established in Rule 36 of the Rules of Procedure have been met. Rule 36 [Admissibility Criteria], paragraphs (1) (d) and (2) (b) of the Rules of Procedure, stipulates:

*"(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:*

*[...]*

*b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights".*

25. In the present case, the Court notes that the Applicant's main allegation is that *"the Court of Appeals and the Supreme Court have erroneously determined the factual situation, which subsequently led to the adoption of a decision which contained serious violations of the provisions of the contested procedure..."*
26. Accordingly, the Court notes that these Applicant's allegations of a violation of the right to a fair trial exclusively relate to the manner in which the factual situation was determined and substantive law was applied.
27. In this regard, the Court reiterates that the complete determination of the factual situation, as well as the interpretation and application of laws are within the full jurisdiction of the regular courts, whereas the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a "fourth instance court" (see, ECtHR case *Akdivar v. Turkey*, No. 21893/93, of 16 September 1996, para. 65; see, also, *mutatis mutandis*, Constitutional Court: case KI86/11, Applicant *Milaim Berisha*, of 5 April 2012).
28. Furthermore, bearing in mind the Applicant's allegation *"that the Court of Appeals and the Supreme Court erroneously concluded the time when the verbal insults took place,"* the Court emphasizes that it is not its role to deal with errors of fact or law allegedly committed by the regular courts, when assessing the evidence (legality), unless and insofar they may have violated the rights and freedoms protected by the Constitution (constitutionality).
29. Likewise, regarding the Applicant's allegations of a violation of the law, the Court notes that the Court of Appeals and the Supreme Court based their decisions on the provisions of the applicable law, that is, on Article 17.1 of the Civil Law against

Defamation and Insult No. 02/L-65 (hereinafter: the CLADI), which, *inter alia*, states:

*“17.1. The limitation period for filing a request for compensation under this Law is three (3) months from the day that the allegedly injured person knew or should have known of the expression and the identity of the author, and shall in any event not exceed one (1) year from the day that the expression was made public.”*

30. In this regard, the Court does not consider the decisions of the Court of Appeals and the Supreme Court, which found that the claimant missed the deadline for judicial protection for alleged defamation under Article 17, paragraph 1, of the CLADI, as arbitrary and ungrounded.
31. In these circumstances, the Court considers that nothing in the case presented by the Applicant indicates that the proceedings before the Court of Appeals or the Supreme Court were unfair or arbitrary such that the Constitutional Court would be satisfied that the core of the right to a fair and impartial trial has been violated, or that the Applicant was deprived of any procedural guarantees which would lead to a violation of that right under Article 31 of the Constitution or paragraph 1 of Article 6 of the ECHR.
32. As regards the Applicant's other allegations concerning the violation of the rights and freedoms guaranteed by the Constitution (namely Articles 21, 22, 53), the Court finds them ungrounded, because the Applicant did not provide any arguments or evidence to substantiate and justify these alleged violations.
33. Therefore, the Court notes that the Applicant merely expressed his dissatisfaction with the outcome of the challenged proceedings and did not provide relevant arguments to justify his allegations that the constitutional rights invoked by him, were in any way violated by those proceedings.
34. The Court emphasizes that it is the Applicant's obligation to substantiate his constitutional allegations and to submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR. That assessment is in compliance with the jurisdiction of the Court (see: case of the Constitutional Court No. KI19/14 and KI21/14, Applicants: *Tafil Qorri and Mehdi Syl*a, of 5 December 2013).
35. Therefore, the Applicant's Referral is manifestly ill-founded on a constitutional basis and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.



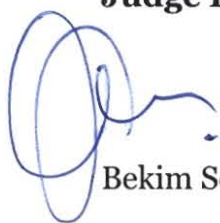
## FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 (1 and 7) of the Constitution, Article 48 of the Law, and Rules 36 (1)(d) and (2) (b) of the Rules of Procedure, at its session held on 19 April 2018, unanimously

## DECIDES

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

**Judge Rapporteur**



Bekim Sejdiu



**President of the Constitutional Court**



Arta Rama-Hajrizi