



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

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Prishtina, 14 December 2018  
Ref. No.:RK 1302/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI91/17**

Applicant

**Enver Islami**

**Constitutional review of Judgment PML No. 102/17 of the Supreme Court  
of Kosovo of 29 May 2017**

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

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by Enver Islami from the Municipality of Podujeva (hereinafter: the Applicant), serving the imprisonment sentence at the Dubrava Correctional Center.

## **Challenged decision**

2. The Applicant challenges Judgment [PML. No. 102/17] of the Supreme Court of 29 May 2017, in conjunction with Judgment [PAK. No. 724/16] of the Court of Appeals of 31 January 2017, and Judgment [PKR. No. 34/16] of the Basic Court in Prishtina (hereinafter: the Basic Court) of 5 October 2016.

## **Subject matter**

3. The Applicant challenges Judgment [PML. No. 102/17] of the Supreme Court of 29 May 2017, claiming that this Judgment violates his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. The Applicant did not accurately specify what rights and fundamental freedoms have been allegedly violated by the challenged judgment.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] and Article 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
6. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in an administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

## **Proceedings before the Court**

7. On 9 August 2017, the Applicant submitted the Referral to the Court.
8. On 9 August 2017, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel, composed of Judges: Ivan Čukalović (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
9. On 28 August 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
10. On 16 June 2018, the mandate of judges: Snezhana Botusharova and Almiro Rodrigues ended. On 26 June 2018, the mandate of judges: Altay Suroy and Ivan Čukalović ended.
11. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.

12. On 18 October 2018, the President of the Court rendered the decision to replace the member of the Review Panel, Ivan Čukalović, and instead of him Judge Arta Rama-Hajrizi was appointed as Presiding of the Panel.
13. On 22 November 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

14. On 20 January 2016, the Basic Prosecution Office in Prishtina - the Serious Crimes Department (hereinafter: the Basic Prosecutor) issued an Indictment [No. PP. I No. 744/2015] against the Applicant on grounded suspicion that he has committed the criminal offense of aggravated murder under paragraph 1, sub-paragraphs 1.5 and 1.8 of Article 179 of the Criminal Code of Kosovo (hereinafter: the CCK).
15. On 30 September 2016, the Basic Court held a main trial session, where the accused, namely the Applicant, in the presence of his defense counsel admitted that he was the perpetrator of the criminal offence he was charged with.
16. On 5 October 2016, the Basic Court rendered Judgment [PKR. No. 34/16], which found the Applicant guilty of the criminal offense of aggravated murder based on paragraph 2, items 2 and 3 of Article 30 of the Criminal Law of Kosovo and sentenced him to 15 years imprisonment. In the circumstances of the Applicant's case, the Court applied the Criminal Law of Kosovo in force at the time of the commission of the offense as a more favorable law, as defined by Article 3 of the CCRK
17. Against the Judgment of the Basic Court, due to the decision on punishment, appeals with the Court of Appeals were filed by the Basic Prosecution, the representatives of the injured family and the Applicant. The first proposed that the appealed Judgment be modified and the accused be sentenced to a higher sentence of imprisonment. Whereas, the Applicant through the appeal proposed the opposite. The Applicant alleged that he was imposed the maximum sentence provided for by the applicable law at the time of the commission of the criminal offense, without taking into account his guilty plea as a mitigating circumstance.
18. On 31 January 2017, the Court of Appeals rendered Judgment [PAK. No. 724/16] which rejected the appeals of the Prosecution and the Applicant as ungrounded and upheld the Judgment of the Basic Court.
19. On an unspecified date, reiterating the allegations of non-application of mitigating circumstances in determining the length of the sentence, the Applicant submitted a request for protection of legality to the Supreme Court on the grounds of essential violation of the criminal law proposing that the challenged judgments be modified in relation to the decision on criminal sanction and a more lenient imprisonment sentence be imposed on him. A response to this request was filed by the State Prosecutor, proposing that the request for protection of legality be rejected as ungrounded.

20. On 29 May 2017, the Supreme Court rendered Judgment [PML. No. 102/17], which rejected the Applicant's request for protection of legality as ungrounded.

### **Applicant's allegations**

21. The Applicant alleges that the Judgments of the regular courts, which found him guilty and confirmed his sentence of 15 years of imprisonment because of the aggravated murder, were rendered in violation of his rights and freedoms guaranteed by the Constitution.
22. The Applicant in his Referral does not clarify what rights and freedoms he claims to have been violated through the act of the public authority which he challenges.
23. The Applicant in essence alleges that by applying the law which was in force at the time of the commission of the criminal offense, namely the Criminal Law of Kosovo, the courts imposed on him a maximum sentence of 15 years imprisonment, without applying the mitigating circumstances, namely the guilty plea, in determining the length of his punishment.
24. The Applicant addresses the Court requesting that the mitigating circumstances be applied, the sentence imposed on him be modified, or to declare the challenged judgments invalid, by remanding the case for retrial.

### **Admissibility of the Referral**

25. The Court first examines whether the Referral has met the admissibility requirements, established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
26. 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."*

27. The Court further examines whether the Applicant fulfilled the admissibility requirements, as prescribed in the Law. In that regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47  
[Individual Requests]

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

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... .”*

28. As regards the fulfillment of these requirements, the Court finds that the Applicant filed a referral in the capacity of an authorized party, challenging the act of a public authority, namely Judgment [PML. No. 102/17] of the Supreme Court of 29 May 2017, after exhaustion of all legal remedies provided by law. In this regard, the Applicant's Referral is in compliance with the criteria established in paragraphs 1 and 7 of Article 113 of the Constitution and Article 47 of the Law. The Applicant also submitted the referral in accordance with the deadline stipulated by Article 49 of the Law.
29. However, in assessing whether the Applicant has met the admissibility criteria established by law, the Court also refers to Article 48 of the Law, which provides the Applicant with an obligation to accurately clarify in his Referral submitted to the Court what rights and freedom he claims to have been violated.
30. The same requirement is clearly established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39, paragraph (1) (d) stipulates:
- (1) *The Court may consider a referral as admissible if:*
- (d) *the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.*
31. Accordingly, the Court states that, in order to consider that a referral meets the admissibility requirements, the Applicant is obliged to accurately clarify in his referral what rights and freedoms he claims to have been violated and to

adequately present the facts and allegations for violations of constitutional rights or provisions.

32. The Applicant did not specify what rights and freedoms were allegedly violated by the act of public authority, namely by Judgment [PML. No. 102/17] of 29 May 2017 of the Supreme Court, which he challenges before the Court. In addition, the Applicant does not accurately clarify the facts and allegations of violation of constitutional rights.
33. In the circumstances of the present case, the Applicant's referral is in accordance with the criteria set forth in paragraphs 1 and 7 of the Constitution and Articles 47 and 49 of the Law. However, the Applicant's Referral does not meet the admissibility requirements as established in Article 48 of the Law and item d) of paragraph 1 of Rule 39 of the Rules of Procedure.
34. In sum, in accordance with Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure, the Referral is inadmissible.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Article 113 paragraph 1 and 7 of the Constitution, Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure, on 22 November 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Kopje e vërtetuar  
Overena kopija  
Certified Copy

Gresa Caka-Nimani

Arta Rama-Hajrizi

*This translation is unofficial and serves for informational purposes only.*