



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 9 January 2018  
Ref. No.: RK 1180/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI95/17**

Applicant

**Myrteza Dyla**

**Constitutional review of Judgment PML. No. 152/2016 of the Supreme  
Court of the Republic of Kosovo of 13 September 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  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Referral was submitted by Myrteza Dyla from Gjakova (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Judgment PML. No. 152/2016 of the Supreme Court of 13 September 2016, which according to Applicant's allegations was served on him on 5 October 2016.

## **Subject matter**

3. The subject matter is the constitutional review of Judgment PML. No. 152/2016 of the Supreme Court of 13 September 2016, which allegedly violated the Applicant's rights guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments] Article 29 [Right to Liberty and Security], Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] 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: ECHR) and Article 1 [Protection of property] of Protocol 1 to the ECHR.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution (hereinafter: the Constitution), Articles 22 and 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 12 October 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), requesting that his Referral be addressed together with the Referral KI70/16.
6. Initially, the Applicant' Referral was addressed as an integral part of Referral KI70/16.
7. On 18 October 2016, the Court requested the Applicant to clarify the relation of his Referral with Referral No. KI70/16 and to submit to the Court the referral form as well as to complete his Referral with relevant documentation, namely with the decisions of the regular courts.
8. On 1 November 2016, the Applicant submitted to the Court the Referral form as well as the decisions of the regular courts.
9. Despite the request of the Court, the Applicant did not clarify his allegation of the relation between his Referral with the Referral KI70/16.
10. On 16 August 2017, the President of the Court due to the lack of connection between the current Referral with Referral KI70/16, ordered registration of this Referral as a separate Referral under number KI95/17.



11. On 22 August 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.
12. On 28 August 2017, the Court informed the Applicant about the registration of his Referral under No. KI70/16. On the same date, the Court notified the Supreme Court about the registration of the Referral.
13. On 7 December 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### Summary of facts

14. On 7 March 2011, the Basic Prosecution in Gjakova - Serious Crimes Department, filed the Indictment PP/I No. 230/2008, against the Applicant and others, due to grounded suspicion that he committed a criminal offense "*Abusing official position or authority*" under Article 339 para. 1 in conjunction with para. 3, in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: the CCK).
15. On 29 December 2015, the Basic Court in Gjakova, Judgment PKR. No. 251/11, found the Applicant guilty of committing the criminal offense "*Abusing official position or authority under Article 422 paragraph 1 of the CCRK*", by imposing on him the imprisonment sentence of up to one year, which punishment will not be executed if the Applicant does not commit another criminal offense within three (3) years.
16. On an unspecified date, the Applicant filed an appeal with the Court of Appeals of Kosovo, against Judgment PKR. No. 251/11 of the Basic Court in Gjakova of 29 December 2015, alleging essential violation of the provisions of the criminal procedure, criminal law and erroneous determination of factual situation.
17. On 4 May 2016, the Court of Appeals of Kosovo, by Judgment PAKR. No. 142/2016 rejected as ungrounded the Applicant's appeal and upheld Judgment PKR. No. 251/11 of the Basic Court in Gjakova of 29 December 2015. The reasoning of the Judgment reads that "*The challenged judgment is concrete and clear, there is no contradiction with itself or with the reasons presented in the challenged Judgment [...] Regarding the allegation of the defense that the indictment was filed after three years from the time when the investigation was conducted, the criminal matter is subject to the provisions of the old Criminal Procedure Code, where the prosecution did not have a decisive deadline for filing an indictment [...]*".
18. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against two decisions of lower instance, alleging essential violation of the provisions of criminal procedure and violation of the Criminal Law.

19. On 27 June 2016, the State Prosecutor of Kosovo, through Submission KMLP. II. No. 111/2016 filed the objection by proposing that the request for protection of legality be rejected.
20. On 13 September 2016, the Supreme Court of Kosovo, by Judgment PML. No. 152/2016, rejected the request for protection of legality as ungrounded. The Supreme Court in its Judgment gave a detailed answer to all the Applicant's allegations.

### **Applicant's allegations**

21. The Court recalls that the Applicant alleges that the challenged decision violated the rights guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], Article 29 [Right to Liberty and Security], Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], and Article 53 [Interpretation of Human Rights Provisions] of the Constitution, in conjunction with Article 6 [Right to a fair trial], of ECHR and Article 1 [Protection of property] of Protocol 1 to the ECHR.
22. The Applicant alleges that: *"the investigation procedure started on 5 March 2008, the indictment was raised on 7 March 2011, which means that the INDICTMENT WAS FILED AFTER THREE YEARS. The legal strict time limits stipulated under Article 225, paragraph 1, of the Criminal Procedure Code, which was in force at the time when the indictment was raised, have expired [...]."*
23. The Applicant, referring to several judgments of the regular courts which he did not bring to the Court, alleges that *"the principle of ne bis in idem has been violated by the first instance court, which has ignored this evidence"*.
24. In addition, the Applicant alleges that his Referral should be treated same as Referral KI70/16, where the Applicant is the person F.K., and where a constitutional review of Judgment Rev. no. 185/2015 of the Supreme Court of the Republic of Kosovo, of 28 December 2015, was requested.
25. Finally, the Applicant requests the Court to annul Judgment PML. No. 152/2016, of the Supreme Court, of 13 September 2016, Judgment PAKR. No. 142/2016, of the Court of Appeals, of 4 May 2016, and Judgment PKR. No. 251/11, the Basic Court in Gjakova of 29 December 2015.

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

26. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
27. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:



*“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.”*

28. The Court also refers to Article 48 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”.*

29. The Court also takes into account Rule 36 [Admissibility Criteria], (1) (d) and (2) (b) of the Rules of Procedure, which provides:

*“(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.”*

30. In this case, the Court considers that the Applicant is an authorized party, he has exhausted all available legal remedies and has submitted the Referral within the foreseen time limit. However, the Court must further assess whether the requirements established in Article 48 of the Law and foreseen in Rule 36 of the Rules of Procedure have been met.

31. The Court notes that the Applicant alleges that the challenged decision violated the Applicant's right to liberty and security, the rights of the accused, the right to fair and impartial trial, the right to work and exercise profession and the right to protection of property, which are guaranteed by the Constitution and the ECHR.

32. In this regard, the Court refers to the Applicant's basic allegation that: *“The strict legal deadlines laid down in Article 225, paragraph 1 of the Criminal Procedure Code have expired, which was in force at the time of filing the indictment”.*

33. The Court notes that the Applicant filed the same allegations with the Supreme Court and with the lower instance courts.

34. In this regard, the Court considers that the Applicant bases his request on the allegations of erroneous interpretation of articles of the Criminal Procedure Code of Kosovo (hereinafter: the CPCK), made by the Supreme Court and the lower instance courts.

35. Regarding this allegation, the Court refers to its case-law, where it has repeatedly stated that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and insofar as they may have violated the rights and freedoms protected by the Constitution (constitutionality), (See cases of the Court, KI53/15, Applicant: *Heset Neziri*, Resolution on Inadmissibility of 10 November 2015, para. 38 and KI112/15, Applicant: *Feride Bulliqi and others*, Resolution on Inadmissibility of 23 May 2016, paragraph 41).
36. The Court recalls also the case law of the European Court on Human Rights (hereinafter: ECtHR), which *inter alia*, stated that: “[...] the Court reiterates 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.” (*Anheuser-Busch Inc. v. Portugal*, Application No. 73049/01, Judgment of 11 January 2007, para. 83, see also, *mutatis mutandis*, the ECtHR case, *Bochan v. Ukraine* [GC], application no. 22251/08, Judgment of 5 February 2015,).
37. The Court reiterates that 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). Therefore, the Constitutional Court cannot act as “fourth instance court” (see Constitutional Court: case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
38. It is primarily the role of the regular courts to deal with the interpretation of the law, while the role of the Constitutional Court is to verify whether the consequences of such interpretation are in accordance with the Constitution (see, *mutatis mutandis*, the case of the ECtHR, *Miragall Escolono and Others v. Spain*, applications Nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, Judgment of 25 January 2000, paragraphs 33-39).
39. Accordingly, the Constitutional Court can only make the assessment of legal interpretation of the regular courts and only if those interpretations are arbitrary or manifestly unreasonable (See *mutatis mutandis* the ECHR case, *Bochan v. Ukraine* [GC], application no. 22251/08, Judgment of 5 February 2015, paragraph 61).
40. However, in the present case the Applicant has failed to prove that there is arbitrariness in the interpretations given by the regular courts. Furthermore, the Court considers that the reasoning of the decisions of the regular courts, regarding the Applicant's allegations, is clear and sufficiently reasoned.
41. In this regard, the Court notes that Judgment PML. No. 152/2016 of the Supreme Court of 13 September 2016 addressed and decided on the above allegations, concluding that the challenged Judgment PAKR. No. 142/2016 of the Court of Appeals, of 4 May 2016, does not contain essential violations of



the criminal procedure provisions and violation of the Criminal Law. In that Judgment, *inter alia*, it is emphasized that “according to the provisions of the criminal procedure that were applicable at the time of the commission of the criminal offense - Article 225 paragraph 1 of the CPCK, the investigations should be completed within a period of 6 months, while the case files do not show that there was any letter from the prosecutor's representative for the extension of the investigation while the charge was filed on 7.03.2011 and it follows that it is a violation of this provision of criminal procedure which is of a relative character that did not affect the decision-making of the court due to the fact that the provision of Article 224 explicitly foresees cases of termination of investigations, while the provision of Article 223 explicitly provides for cases when the investigation is suspended while in any legal provision it is not mentioned that with the expiry of the deadline the investigations must be terminated [... ] Regarding the violations of the Criminal Law, for which a request for protection of legality can be filed, is provided by the provision of Article 385 of the CPCK, which provision clearly provides cases where a court decision is considered to contain these violations, whereas in the request there is no violation in accordance with this legal provision”

42. In addition, the Judgment of the Court of Appeals PAKR. No. 142/2016 of 4 May 2016 emphasized the fact that in the present case the provisions of the Provisional Criminal Procedure Code are applicable, where the prosecution had no decisive deadline to initiate the indictment, and in any legal provision it is not mentioned that with the expiry of the deadline, the investigations must be terminated.
43. Therefore, the Court considers that the Applicant has not substantiated that the proceedings before the Supreme Court were unfair or arbitrary, or that his rights and fundamental freedoms protected by the Constitution have been infringed by the alleged erroneous interpretation of the CPCK. Therefore, no constitutional matter was substantiated by the Applicant (See case KI63/16, Applicant *Astrit Pira*, Resolution on Admissibility, of 8 August 2016, para. 44. and also Case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Admissibility, of 15 November 2016, para. 62).
44. With regard to the Applicant's allegation that the first instance court violated the principle of “*ne bis in dem*”, the Court notes that the Applicant has not provided convincing evidence and arguments in support of his allegation.
45. The Court notes that the mere mentioning of articles or relevant principles of the Constitution, alleging that they have been violated, without further explanation as to how these violations occurred, is not sufficient to raise an allegation based on a constitutional violation. When alleging such violations of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument (See Case of the Constitutional Court, KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).

46. Regarding the Applicant's allegation of the connection of his Referral to Referral KI70/16, the Court reiterates that, despite its request, the Applicant did not clarify at all this allegation, namely he did not provide any argument that would prove the existence of the interconnection between the two Referrals in question. Therefore, the Court does not consider it necessary to further address this allegation of the Applicant.
47. In conclusion, the Court reiterates that the Applicant has not presented any convincing arguments that would prove the allegations of a violation of his constitutional rights.
48. Accordingly, the Court finds that the Applicant's Referral does not meet the admissibility requirements established in the Rules of Procedure.
49. Therefore, the Referral is manifestly ill-founded on constitutional basis in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, in its session held on 7 December 2017, 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