



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

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Prishtina, on 3 April 2018  
Nr. ref.: RK 1203/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI54/17**

Applicant

**Habib Morina**

**Constitutional review of Decision PN. No. 275/2017 of the Court of Appeals of the Republic of Kosovo, of 14 April 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.

### **Applicant**

1. The Referral was submitted by Habib Morina from village Reshtan, Municipality of Suhareka (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Decision PN. No. 275/2017, of the Court of Appeals of the Republic of Kosovo of 14 April 2017.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the rights and freedoms of the Applicant guaranteed by Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on Article 113.7 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules).

## **Proceedings before the Constitutional Court**

5. On 27 April 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 28 April 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 Artë Rama-Hajrizi.
7. On 5 May 2017, the Court notified the Applicant about the registration of the Referral.
8. On the same date, a copy of the Referral was sent to the Court of Appeals of the Republic of Kosovo.
9. On 21 February 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral as manifestly ill-founded.

## **Summary of facts**

10. On 28 February 2017, the Basic Prosecution in Prizren - Serious Crimes Department filed an indictment against the Applicant due to the grounded suspicion of committing the criminal offense of "abusing official position or authority" under Article 422 para. 1 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).
11. On 30 March 2017, the Applicant submitted to the Basic Court in Prizren - Department for Serious Crimes the request for dismissal of the indictment.

12. On 31 March 2017, the Basic Court in Prizren - Department for Serious Crimes, rendered Decision PKR. No. 25/17, which rejected the Applicant's request for dismissal of the indictment.
13. On 7 April 2017, the Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court in Prizren - Department of Serious Crimes.
14. On 14 April 2017, the Court of Appeals of the Republic of Kosovo rendered Decision PN. No. 275 / 17, which rejected the Applicant's appeal and upheld in entirety the Decision PKR. No. 25/17 of the Basic Court in Prizren of 31 March 2017.

### **Applicant's allegations**

15. The Applicant alleges that during the proceedings against him, his right guaranteed by Article 31 paragraph 1 of the Constitution was violated, because:

*"The Basic Court in Prizren rejected my request for dismissal of the indictment by violating Article 251 of the criminal procedure without providing any clarification on my allegations. Whereas, the Court of Appeals, deciding upon my appeal against the Decision of the Basic Court where in the Decision of the Basic Court are stated violations... did not find any violation although, according to my opinion, they are obvious and rejected it, mainly it upheld the Decision of the Basic Court".*

16. Accordingly, the Applicant alleges that:

*"by not taking actions which they are obliged to do pursuant to criminal procedure code and by taking actions contrary to this code, these authorities have violated my right to a fair and impartial trial".*

17. The Applicant also alleges that the Basic Court and the Court of Appeals violated his right guaranteed by Article 24 of the Constitution, stating that: *"During the entire procedure, I have been and felt discriminated due to reasons stated in this submission".*
18. Finally, the Applicant requests the Court to *"return of the case to the initial review of the Basic Court and its treatment under the law".*

### **Admissibility of the Referral**

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and as further specified by the Law and foreseen in the Rules of Procedure.
20. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 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 of public authorities of their individual rights and freedoms guaranteed by Constitution, but only after the exhaustion of all legal remedies provided by law”.*

21. The Court also refers to Article 49 [Deadlines] 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.*

22. The Court considers that the Applicant is an authorized party, he exhausted the legal remedies available and filed the Referral on time.

23. However, the Court also refers to Article 48 of the Law [Accuracy of the Referral], 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.*

24. In addition, the Court takes into account Rule 36 [Admissibility Criteria], in particular sub-rule (1) letter (d) and sub-rule (2) letter (b) of the Rules of Procedure, establishing that:

*“(1) The Court may consider a referral if:*

*...*

*b) 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”.*

*[...]*

*d) the Applicant does not sufficiently substantiate his claim”.*

25. The Court recalls that the Applicant alleges that the regular courts, namely the Basic Court in Prizren and the Court of Appeals violated his rights guaranteed by Articles 24 and 31 of the Constitution.

26. More specifically, the Applicant relates the allegations of a violation of the right to a fair and impartial trial to the rejection of his request for dismissal of the indictment, alleging a violation of Article 251 of the criminal procedure code, in

for the fact that the respective courts disregarded his allegations, connecting, in the end, all these actions of the courts with allegations of violation of Article 24 of the Constitution.

27. The Court notes that, according to the case file, it follows that the case is pending the adjudication on merits before the regular courts.
28. In this regard, the Court notes that the Applicant's allegations of violation of his constitutional rights relate to the way the regular courts administered the evidence before them and how they interpreted and applied the procedural law during the proceedings conducted regarding the Applicant's request for dismissal of the indictment.
29. The Court considers that these allegations raise issues of legality, which the regular courts take care of under the competence given to them by the Constitution.
30. In this regard, the Court notes that the Basic Court in Prizren, by Judgment PKR. No. 25/17, of 31 March 2017, among the other, emphasized:

*"The Court finds that allegations of the accused for dismissal of the indictment and the evidence contained in the indictment do not establish the grounded suspicion that the accused has committed criminal offence, have no legal justification and legal ground for dismissal of the indictment because none of legal elements provided in Article 253, paragraph 1.1, 1.2 and 1.4 of CPC are not met as the offence he is charged with presents a criminal offence, there are no circumstances that exclude his criminal liability; whereas by the case files, it results that there is sufficient evidence that confirm the well grounded suspicion that the accused has committed the criminal offence which he is charged with by the indictment".*

31. In addition, the Court of Appeals, by Decision PN. No. 275/17 of 14 April 2017, reasoned that:

*"According to the assessment of the Court of Appeals, the abovementioned appealing allegations are not grounded because the first instance court by the challenged decision on dismissal of the indictment, examined as stated in the request to assess it and correctly provided sufficient reasons that the indictment filed by the Basic Prosecution Office in Prizren has sufficient evidence to support the grounded suspicion that the accused has committed the criminal offence he was charged with. All these evidence have been proposed for administration in the court hearing and there is no convincing argument and no legal ground to dismiss the indictment as required by provisions of Article 250, paragraph 1, sub-paragraph 1.1, 1.2, 1.3 and 1.4 of CPCK".*

32. The Court of Appeals also stated that:

*“The criminal procedure currently is in the post-indictment stage and in the next stages of the criminal procedure and the main trial it will be decided whether the defendant’s liability is established; therefore, in this stage of the criminal procedure, the defendant liability cannot be assumed either by the Court or by the parties”.*

33. Based on the foregoing considerations, the Court considers that the regular courts have addressed and justified the Applicant's allegations of the confirmation of the indictment in a detailed and comprehensive manner, without prejudice to the merits and the final outcome of the case.
34. Moreover, the Court considers that the proceedings for confirmation of the indictment were conducted in accordance with the principle of adversarial procedure, which means that the Applicant has been able to challenge the unfavorable arguments against him and use them in his favor before the regular courts.
35. Therefore, the Court considers that the Applicant failed to prove that the proceedings before the Basic Court and the Court of Appeals were unfair or arbitrary or discriminatory or that his fundamental rights and freedoms protected by the Constitution were violated by erroneous application or interpretation of the aforementioned provisions of the CPCRK. The Court reiterates that the manner of application and interpretation of certain provisions of the CPCRK in a specific criminal case is a question of legality. The Applicant has failed to prove any constitutional issues with his arguments before this Court (see Case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 36, Case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, 8 August 2016, paragraph 44, and see also case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16; KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).
36. In this regard, the Court also emphasizes that it is not its task 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 in so far as they may have infringed rights and fundamental freedoms protected by the Constitution (constitutionality). It cannot itself assess the law that has led a regular court to issue one decision instead of another. If it was different the Court would act as “fourth instance court”, which would result in exceeding the limitations provided for its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law. (See, *mutatis mutandis*, European Court of Human Rights, case *Garcia Ruiz v. Spain*, No.30544/96, Judgment of 21 January 1999, paragraph 28).
37. As a result, the Court considers that the Applicant did not substantiate the allegations that the relevant proceedings were in any way unfair or arbitrary and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights and

Fundamental Freedoms (see, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).

38. Therefore, the Court finds that the Applicant's Referral does not meet the admissibility requirements established in the Rules of Procedure, because the Referral is manifestly ill-founded on constitutional basis, because the facts presented do not in any way justify the allegation of violation of any constitutional right and that the Applicant does not sufficiently substantiate his allegation of constitutional violation.
39. In sum, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and, in accordance with Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, it is to be declared inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 and 48 of the Law and Rules 36 (1) (d), 36 (2) (b) and (d), and 56 (2) of the Rules of Procedure, on 21 February 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. This Decision is effective immediately.

**Judge Rapporteur**



Bekim Sejdiu



**President of the Constitutional Court**



Arta Rama-Hajrizi