



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 11 Juna 2018  
Ref. no.: RK 1269/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI19/18**

Applicant

**Fatmir Syla**

**Constitutional review of Decision Rev. No. 237/2017 of the Supreme  
Court of Kosovo of 09 November 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 Fatmir Syla, residing in the village Bresalc, Municipality of Gjilan (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Decision [Rev. No. 237/2017] of the Supreme Court of Kosovo of 09 November 2017.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

## **Legal basis**

4. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing of the Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] 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 15 February 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 February 2018, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 21 February 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.
8. On 25 May 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. On 10 February 2017, the Applicant filed a claim with the Basic Court in Gjilan (hereinafter: the Basic Court) against the Government of the Republic of Serbia



for compensation of material and non-material damage, caused to him during the period between 10 April 1999 and 12 June 1999.

10. On 14 February 2017, the Basic Court, by Decision (No. 37/2017), declared itself without territorial jurisdiction in the first item of the enacting clause and instructed the party to file a claim with the competent court in the Republic of Serbia in the second item of the enacting clause.
11. On 13 March 2017, the Applicant filed an appeal against the decision of the Basic Court with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) on the grounds of essential violations of the provisions of the contested procedure, claiming that several provisions of the contested procedure were not taken into account and were not applied by the first instance court. The Applicant requested that the decision of the Basic Court be annulled and his appeal be declared admissible.
12. On 26 June 2017, the Court of Appeals by Decision (Ac. No. 2041/17) the first upheld the first item of the enacting clause of the Basic Court, by which it declared itself as territorially incompetent, and modified the second item of the enacting clause by rejecting the claim of the Applicant.
13. On 10 August 2017, the Applicant submitted a request for revision to the Supreme Court on the grounds of essential violations of the provisions of the contested procedure. He requested that his revision be approved, that the decision of the Court of Appeals and of the Basic Court be annulled and the matter be remanded for reconsideration and retrial to the Basic Court.
14. On 9 November 2017, the Supreme Court, by Decision (Rev. No. 237/2017), rejected the Applicant's revision as ungrounded. The Supreme Court reasoned in its decision that it is a matter of a legal-property dispute in a foreign country and that the rules of international law apply in the present case, for what the domestic court is not competent to decide.
15. The Supreme Court further reasoned that the provisions of Article 28 of the LCP cannot be applied because in the Applicant's case we are not dealing with a foreign natural or legal person, but a foreign state with which the state of Kosovo on whose territory the damage was caused has not concluded any international agreement regarding the jurisdiction of the regular courts for this type of disputes.

### **Applicant's allegations**

16. The Applicant alleges that the decision of the Supreme Court violated the rights guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, Article 6 (Right to a fair trial) of the ECHR and Article 15 of the UDHR.

17. The Applicant alleges that the regular courts *„erroneously applied the applicable law referring the territorial jurisdiction of the Basic Court [...], because, the court with territorially competencies for the adjudication of the legal matters, always is the court in which territorial jurisdiction crime was committed, moral damage respectively the material one! This definition of the valid legal attitude coincides with the interest of the injured party, the economic policy in the legal and administrative procedures, and in compliance with the international principle - per loci!“*.
18. The Applicant further states that *„he was not given the opportunity to be treated in the legal proceeding according to the applicable law in Kosovo, [...] and the best case law of the region“*
19. The Applicant, referring to Article 21, paragraph 2 of the Constitution, claims that the regular courts *“did not apply advanced international standards on human rights. One of the standards is offering the injured party an opportunity to initiate the matter on compensation of moral and material damage caused as a result of direct actions by the Serbian authorities”*.
20. The Applicant, referring to Article 54 of the Constitution, also states that he was *“denied the judicial protection of rights, the right of access on local justice and institutional guarantees for protection of human rights”*.
21. The Applicant refers to the examples where to the victims of the Second World War were allowed *„to submit individual claims to the local courts for the compensation of damage caused by Germany“*. In this regard, he specifies that in cases of Greece, Italy and the United States of America, the individuals were given the opportunity to seek compensation for *„ damage caused by Germany during the World War II in compliance with the international principle per loci“*.
22. Finally, the Applicant requests the Court to approve the Applicant's referral, to annul the decisions of the regular courts and the Constitutional Court to order *“that the Basic Court in Gjilan, [...] repeats the proceedings in this case and adjudicate in accordance with applicable law and good court practices the legal matter for compensation for moral and material damage to the claimant!“*

### **Admissibility of the Referral**

23. The Court shall first examine whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.
24. 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”.*

25. 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”.*

26. The Court considers that the Applicant is an authorized party, who challenges the act of a public authority after exhausting all available legal remedies and filed the Referral within the 4 (four) month deadline as foreseen by the Law.

27. However, the Court refers to Article 48 [Accuracy of the Referral] 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.”*

28. In addition, the Court also refers to paragraphs (1) (d) and (2) (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which stipulate:

*“(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:*

*[...]*

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

29. The Court recalls that the Applicant alleges that the regular courts violated his rights protected by the Constitution, the ECHR and the UDHR, mainly those pertaining to the right to fair and impartial trial and to judicial protection of rights.
30. In this regard, the Court notes that the Applicant also alleges that the regular courts erroneously interpreted the law in force when referring to the territorial jurisdiction of the Basic Court, alleging that the court in which territory the damage was caused is the competent court to adjudicate his legal matter.
31. The Court considers that the Applicant’s allegations in fact relate to the interpretation given by the regular courts of the procedural provisions

regarding their territorial jurisdiction and their territorial competence to deal with the Applicant's Referral.

32. The Court notes that it is not its duty to deal with errors of fact or law allegedly committed by regular courts when assessing evidence or applying the law (legality), unless and insofar as they may have violated the rights and the freedoms protected by the Constitution (constitutionality). In fact, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law (see: *mutatis mutandis*, ECHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 28).
33. The complete determination of factual situation and correct application of law is within the full jurisdiction of the regular courts (issue of legality). Therefore, the Court cannot act as "*fourth instance court*" (see: ECtHR case of 16 September 1996, *Akdivar v. Turkey*, No. 21893/93, para. 65; see: also, *mutatis mutandis*, case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, of 5 April 2012).
34. The Court notes that the Supreme Court assessed the interpretation of the Court of Appeals and the Basic Court of the procedural provisions regarding their competence to resolve the Applicant's Referral.
35. The Supreme Court, when reviewing the Applicants' allegations reasoned that the Basic Court and the Court of Appeals correctly applied the provisions of Article 18, paragraph 3 and Article 39, paragraphs 1 and 2 of the Law on Contested Procedure when they stated that they did not have jurisdiction over these legal matters. Therefore, the Supreme Court rejected the Applicant's allegation, because general territorial jurisdiction is in the court in which territory is the seat of the Assembly of the Republic of Serbia, which is not located in the territory of the Kosovo courts.
36. The Supreme Court further specified that in the case of the Applicant "*... the competencies of our courts in context with international (foreign) elements ,cannot be applied in the present case, since it is not about even a foreign person, or foreign legal entity, but with foreign country , with which until this day the Kosovo state on which territory was caused the damage, has not concluded any international agreement ( bilateral, etc) concerning the local court competencies in relation to this kind of disputes*".
37. The Court considers that the conclusions of the Basic Court, the Court of Appeals and the Supreme Court were reached after a detailed examination of all the arguments presented by the Applicant. In this way, the Applicant was given the opportunity to present at all stages of the proceedings the arguments and evidence he considers relevant to his case.
38. All arguments of the Applicant, which were relevant to the resolution of the dispute, had been properly heard and examined by the courts. All the material and legal reasons related to the challenged decisions were presented in detail



by the Applicant and the Court concludes that the proceedings before the regular courts, viewed in their entirety were fair (see: *mutatis mutandis*, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paras. 29 and 30).

39. The mere fact that the Applicant is not satisfied with the outcome of the decisions of the Supreme Court, or the mentioning of articles of the Constitution is not sufficient to build an allegation of constitutional violation. When alleging such violations of the Constitution, the Applicant must provide reasoned allegations and compelling arguments (see: *mutatis mutandis*, the case of Constitutional Court KI136/14, *Abdullah Bajqinca* Resolution on Inadmissibility of 10 February 2015, paragraph 33).
40. The Court, further notes that the submitted facts and allegations of the Applicant are identical with several Referrals for which the Court found to be inadmissible (see: joined cases of the Constitutional Court KI73/17, KI78/17 and KI85/17, *Istref Rexhepi and 28 others*, Resolution on Inadmissibility of 27 November 2017).
41. In sum, the Court considers that the Applicant has not provided evidence, facts and arguments that indicate that the proceedings before the regular courts have in any way constituted a constitutional violation of his rights guaranteed by the Constitution, namely Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution, Article 6 of the ECHR or Article 15 of the UDHR.
42. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Article 48 of the Law and Rule 36 (1) (d) and (2) (d) 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 (2) (d) and 56 of the Rules of Procedure, at its session held on 25 May 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