



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

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Prishtina, 5 October 2017  
Ref. No.:RK 1130/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI49/17**

Applicant

**Imer Syla**

**Constitutional review of Judgment Pml. No. 227/2016 of the Supreme  
Court of Kosovo of 3 October 2016**

### **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 Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by Imer Syla, residing in Ferizaj (hereinafter: the Applicant), who is represented by Labinota Qosa-Ilazi.

### **Challenged decision**

2. The Applicant challenges Judgment [Pml. No. 227/2016] of the Supreme Court of Kosovo of 3 October 2016, which was served on the Applicant on 17 November 2016.

### **Challenged decision**

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's rights guaranteed by Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

### **Legal basis**

4. The Referral is based on Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 of the Constitution, Article 47 [Individual Requests] 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 20 April 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 24 April 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.
7. On 28 April 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 7 September 2017, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

9. On 11 March 2013, the Basic Prosecution in Ferizaj filed an indictment [PP. II. no. 847-5/2010] against the Applicant for committing the criminal offense "*causing general danger*" under Article 291, of the Criminal Code of Kosovo (hereinafter: the CCK).
10. On 30 July 2014, the Basic Court in Ferizaj - General Department, following the guilty plea by the Applicant during the initial hearing, by Judgment [P. No. 635/13] found the Applicant guilty, and imposed on him a fine and imprisonment sentence of two (2) years, stating that the sentence will not be executed within a period of 2 (two) years, provided that the accused,

respectively the Applicant, does not commit any other criminal offense during this period.

11. On 10 March 2016, the Applicant filed a request for reopening of the criminal proceedings with the Basic Court in Ferizaj, against Judgment [P. No. 635/13] of 29 July 2014, of the Basic Court in Ferizaj, alleging erroneous determination of factual situation, the existence of new evidence, and arguing that the Applicant “*plead guilty without understanding the nature of the criminal offense*”, and that consequently, the legal requirements for guilty plea have not been met during the initial hearing.
12. On 14 April 2016, the Basic Court in Ferizaj, by Decision [PK. No. 42/16] rejected the Applicant's request as inadmissible, assessing that the facts and evidence presented do not provide legal basis to allow the reopening of the criminal proceedings.
13. On 18 April 2016, the Applicant filed an appeal against the Decision [PK. No. 42/16] of the Basic Court in Ferizaj, of 14 April 2016, claiming a violation of the fundamental right of the party provided for in the Criminal Procedure Code of Kosovo (hereinafter: the CPCK).
14. On 18 July 2016, the Court of Appeals of Kosovo, by Decision [PN. No. 485/2016], rejected as ungrounded the Applicant's appeal. The Court of Appeals in its Decision gave detailed responses to all the Applicant's allegations.
15. On 17 August 2016, the Applicant filed a request for protection of legality against Decision [PN. No. 485/2016] of the Court of Appeals of Kosovo, of 18 July 2016, with a proposal that the latter be annulled and the case be remanded for retrial.
16. On 3 October 2016, the Supreme Court of Kosovo by Judgment [Pml. No. 227/2016], rejected as ungrounded the request for protection of legality. The reasoning of the Judgment, *inter alia*, states: “[...] *both in the first and second instance decision, the legal reasons have been given for rendering the challenged decisions [...] it was rightly ascertained in the first instance decision that the evidence on which is based the request for reopening of the criminal proceedings [...] does not justify the allowing of the reopening of the criminal proceedings, and the court of second instance has also approved it.*”

### **Applicant's allegations**

17. The Applicant alleges that by Judgment [Pml. No. 227/2016] of the Supreme Court of Kosovo of 3 October 2016, the rights guaranteed by Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution have been violated.
18. The Applicant's arguments in relation to his allegations of constitutional violation are as follows: “*the right of Mr. Imer Sylja to fair and impartial trial that constitutes a guaranteed right pursuant to Article 31 of the Constitution of the Republic of Kosovo has ultimately been violated, whereas if we are to analyse this case from its outset taking into consideration the educational*

*background of Mr. Imer Sylja [...] it follows that the aforementioned competent authorities in relation to Imer Sylja during the legal proceedings in this criminal case against Imer Sylja, have clearly violated par. 5 of Article 30, par. 1 and 6 of Article 31 as well as Article 54 of the Constitution of the Republic of Kosovo, since there is not a single piece of evidence proving that Imer Sylja has been an owner of the immovable property in which the aforementioned criminal offence was committed [...]the first instance court was not entitled to obtain the guilty plea from the defendant Imer Sylja without the presence of his defence counsel”.*

19. The Applicant requests the Court to annul the decisions of the regular courts.

### **Admissibility of the Referral**

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution and as further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7, 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 also refers to Articles 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”.*

23. In addition, the Court takes into account Rule 36 [Admissibility Criteria] of the Rules of Procedure, which emphasizes that:

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

*[...] (c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant; or [...]”.*

24. In the present case, the Court notes that the challenged Judgment was served on the Applicant's representative on 17 November 2016, while the Referral was submitted to the Court on 20 April 2017. Accordingly, the Referral was submitted to the Court out of the 4 (four) month legal time limit.

25. The Court recalls that the purpose of the four-month legal time limit under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenging. (see: case *O' Loughlin and Others v. the United Kingdom*, No. 23274/04, ECtHR Decision of 25 August 2005 and see also case No. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 17 March 2014, paragraph 24).
26. In addition, the Court notes that the 4 (four) month legal limit is calculated from the date when the Applicant was served, after exhaustion of legal remedies, with the challenged decision. (See, for example, *Case Hatip Celik v. Turkey*, ECtHR, Application No. 52991/99, Judgment of 23 September 2004).
27. The Court notes that it is the duty of the applicants or of their representatives to act with *due diligence*, in order to ensure that their requests for protection of rights and fundamental freedoms are filed within the legal time limit of four (4) months provided for in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure (See Case *Mocanu and Others v. Romania* [GC], Application No. 10865/09, 45886/07 and 32431/08, Decision of 17 September 2014, paragraphs 263-267).
28. Therefore, the Referral is to be declared inadmissible because it was not submitted within the deadline established by Article 113.7 of the Constitution, as provided for in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rule 36 (1) (c) of the Rules of Procedure, on 7 September 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. This Decision is effective immediately.

**Judge Rapporteur**

*Gresa Caka-Nimani*  
Gresa Caka-Nimani



**President of the Constitutional Court**

*Arta Rama-Hajrizi*  
Arta Rama-Hajrizi