



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

Prishtina, on 17 October 2019  
Ref. no.:RK 1446/19

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

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI52/19**

Applicant

**Drilon Sadriu**

**Request for constitutional review of Decision REV. No. 6/2019 of the  
Supreme Court, of 07 February 2019**

**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 Drilon Sadriu from Viti, (hereinafter: the Applicant), who is represented by Visar Musa, a lawyer from Viti.

## **Challenged decision**

2. The Applicant challenges Decision REV. No. 6/2019 of the Supreme Court of 07 February 2019, in conjunction with Judgment AC. No. 2101/14 of the Court of Appeals of 16 October 2014 and Judgment C. No. 179/11, of the Basic Court in Gjilan - branch in Viti, of 15 April 2014.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decisions, which allegedly violate the Applicant's rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 10 (Freedom of expression) and Article 14 (Prohibition of discrimination) of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of 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).

## **Proceedings before the Constitutional Court**

5. On 27 March 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 April 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu Krasniqi and Gresa Caka Nimani.
7. On 17 May 2019 the Court notified the Applicant's legal representative about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 25 September 2019, after reviewing the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. On 15 May 2010 in Viti, a traffic accident occurred where the driver of a passenger vehicle „Opel Korsa“, hit the Applicant, causing him bodily harm.
10. It follows from the case file that, on 28 March 2011, the Municipal Court in Gjilan-Branch in Viti (hereinafter: the Municipal Court), upon the criminal report, rendered Judgment P. No. 285/2010, which found the driver of a



passenger vehicle „Opel Korsa“ guilty of causing the traffic accident, and awarding the Applicant a compensation in the amount of € 800, but the Applicant rejected this amount as low and unrealistic.

11. The Applicant filed a claim with the Basic Court against the Insurance Company „Sigurimi“, for compensation of pecuniary and non-pecuniary damage as well as for the pain suffered.
12. On 15 April 2014, the Basic Court rendered Judgment C. No. 179/2011, partially approving the Applicant's statement of claim and ordering the Insurance Company „Sigurimi“, *“...to pay him in the name of pecuniary and non-pecuniary damage the amount of € 4,298 for physical pain, total non-pecuniary damage of € 3,800, with interest of 3.5%, starting on 11 May 2011, or from the date of filing the claim with the court, under threat of forced execution.* While the Court in item II of the judgment rejected as ungrounded the statement of claim for payment of the amount of € 6,452, in the name of third party assistance and enhanced nutrition.
13. Against the Judgment of the Basic Court, the appeal was filed with the Court of Appeals by the Insurance Company „Sigurimi“ on the grounds of essential violations of the provisions of the contested procedure under Article 182.2 of the LCP, erroneous and incomplete determination of factual situation and erroneous application of substantive law.
14. The Applicant sent a response to appeal, in which he challenged as ungrounded the arguments of Insurance Company „Sigurimi“, with a proposal to uphold the challenged judgment of the Basic Court.
15. On 16 October 2014, the Court of Appeals upheld in part the appeal of the Insurance Company „Sigurimi“ and rendered Judgment AC. No. 2101/2014, which, under item I of the enacting clause, modified the adjudicated amount so that for non-pecuniary damage for physical pain awarded to the Applicant the amount € 1,500 and for the fear suffered the amount or € 1,300. Under item II of the enacting clause, the Court of Appeals obliged the respondent to pay the adjudicated amount with the interest payable to banks in deposited funds over one year.
16. In the reasoning of Judgment AC. No. 2101/2014, with regard to item I of the enacting clause, the Court of Appeals concluded:

*“The Court of Appeals, after considering the first instance judgment, within the limits of the aforementioned causes in the appeal, within the meaning of Article 194 of the LCP, accepts as correct and lawful the legal position of the first instance court, concluding that it fully and correctly established the factual situation in the case of the minor claimant, concluding that he is entitled to compensation for non-pecuniary and pecuniary damage, which he suffered as a result of the current accident, but that the adjudicated amounts for non-pecuniary damage - are very high and do not match the nature of the claimant's injuries and the applicable criteria for insurance companies operating in Kosovo or with the case law created by the Supreme Court of Kosovo, which in this case is*

*part of the challenged judgment including the erroneous application of substantive law...*

17. In the reasoning of Judgment AC. No. 2101/2014, with regard to item II of the enacting clause, the Court of Appeals concluded:

*"The challenged judgment, in the part relating to the claimant's additional claim relating to the accepted interest in the amount applicable at the rate of 3.5%, from the date of filing the claim, that is, from 11.5.2011 until the final payment, it is erroneous in terms of time and amount, therefore, for the same reason (erroneous application of substantive law), even in this part it is modified, so that the claimant is recognized the legal default interest from 15.4.2014. on the date of decision by the first instance court, when the latter was given the opportunity to express the claimant's damage in money, and up to the final payment, according to the interest rate norms paid by the banks operating in Kosovo, for deposited funds over a year, without a specific destination, which is in accordance with Article 277 of the LCP".*

18. The Applicant filed a request for revision with the Supreme Court against the judgment of the Court of Appeals.
19. On 07 February 2019, the Supreme Court rendered Decision REV. No. 6/2019 which dismissed the Applicant's revision as inadmissible submitted against Judgment Ac. No. 2010/2014 of the Court of Appeals in Prishtina, stating that:

*"The court concluded that the revision is inadmissible, as the provision of Article 211.2 of the LCP stipulates that the revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed € 3000. The value of the dispute in the challenged part is € 700, which does not exceed the determined limit."*

### **Applicant's allegations**

20. The Applicant tries to build his allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR solely on one allegation, which is:

*"The Court of Appeals in an absurd manner modified the Basic Court's judgment on the basis of physical pain and default interest without any legal basis, so that it is contrary to the relevant law - which has to do with self-responsibility as a separate law on the claimant's damage. Also, the Supreme Court of Kosovo rejects the revision of the claimant against the two judgments, upholding the two judgments in violation of the relevant law on self-responsibility and evidence. In the first place, the court had to adjudicate on the basis of evidence and law, what is the court's obligation to enforce this law, not the CBK criteria which are not law but regulations within the Insurance Company, and not in an arbitrary way to act in an unconstitutional manner and contrary to the European Convention on*



*Human Rights starting from Article 1 to the last provision guaranteeing human rights before the court, as well as in violation of the Constitution of the Republic of Kosovo itself”.*

21. Further, as regards the violation of Article 24 of the Constitution, the Applicant tries to build the alleged violation solely on the allegation that the courts brought him in an unequal position during the regular proceedings, while in the case of the allegations of violation of Article 10 of the ECHR, the Applicant has not reasoned, or explained, what was the connection between the alleged violations and the nature of the proceedings he ran in connection with the financial compensation.
22. The Applicant requests the court to approve his referral, to annul all decisions of the regular courts and to remand the case for retrial, *„or that the Court of Appeals and the Supreme Court render fair decision on merits based on evidence, facts and law, which they consider to be seriously violated”.*

### **Admissibility of the Referral**

23. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and 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 further examines whether the Applicant fulfilled the admissibility requirements as prescribed by the Law. In this 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.*

#### **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...”*

26. As regards the fulfillment of these requirements, the Court finds that the Applicant submitted the Referral in a capacity of an authorized party, challenging the act of public authority, namely Decision REV. No. 6/2019 of the Supreme Court of 7 February 2019, after exhaustion of all legal remedies. The Applicant also has also clarified the rights and freedoms which he claims to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the referral on time, pursuant to Article 49 of the Law.
27. In addition, the Court takes into account Rule 39 [Admissibility Criteria], paragraph (2) of the Rules of Procedure, which establishes:

*“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*
28. The Court notes from the Applicant's Referral that he challenges the aforementioned decision of the Supreme Court, as well as the judgments of the Court of Appeals and the Basic Court, alleging that the latter violated his rights guaranteed by Article 24 [Equality Before the Law] Article 31 [Right to Fair and Impartial Trial] of the Constitution, as well as Article 10 (Freedom of expression) of the ECHR.
29. In this regard, the Court notes, first of all, that the present case concerns the determination of the Applicant's civil rights, and more specifically, the payment of compensation in respect of a claim brought by him before the Municipal Court in connection with a traffic accident. Therefore, in the present case, it is a matter of a case with civil law nature, from which it follows that Article 31 of the Constitution and Article 6 paragraph 1 of the ECHR are applicable.
30. However, by reviewing the Applicant's allegations, the Court notes that he tries to build his allegations of violation of the constitutional rights and the rights guaranteed by the ECHR solely on one paragraph, in which he primarily emphasizes the erroneous application of law and the determination of factual situation. More specifically, the Applicant considers that in determining the amount of the monetary compensation, the courts should have based their decisions on the law and not *“on the criteria of the Central Bank of Kosovo, which is not law”*.
31. In this respect, the Applicant considered that due to arbitrary application of substantive law he was brought in unequal status in the proceedings before the regular courts.
32. Accordingly, the Court notes, first of all, that, according to the case-law of the European Court of Human Rights (hereinafter: ECtHR) and of the



Constitutional Court, it is not the role of these courts to review the conclusions of the regular courts in respect of the factual situation and application of law (see: ECtHR case, *Pronina v. Russia*, Judgment of 30 June 2005, application number 65167/01).

33. In fact, the Constitutional Court has no jurisdiction to substitute the regular courts in the assessment of facts and evidence, but, in general, the role of the regular courts is to assess the facts and evidence they have administered (see ECtHR, *Thomas v. United Kingdom*, of 10 May 2005, application number 19354/02). The role of the Constitutional Court is to examine whether there has been a violation of constitutional rights (right to a fair trial, right of access to court, right to an effective legal remedy, etc.), and whether the application of the law was otherwise arbitrary or discriminatory.
34. The Court will, therefore, in particular enter the examination how the competent courts have determined the facts and on such determined facts applied the positive legal rules when it is apparent that in a particular proceeding there was an arbitrary conduct of the regular court, both in the procedure of determination of facts, as well as in the application of relevant positive legal rules.
35. Based on the facts of the present case and from the appealing allegations, the Court finds that the Basic Court approved the Applicant's statement of claim and, having regard to the evidence and expertise, rendered the judgment awarding the Applicant a certain amount of money as compensation for physical harm and mental pain.
36. The Basic Court based its decision on the approval of the statement of claim on the legal provision of Article 200, paragraph 1, in conjunction with Article 185 of the LOR (old) and Article 183 (new LOR). Whereas, in respect of compensation for non-pecuniary damage, the Basic Court decided on the basis of Article 323, paragraph 1, of the LCP.

#### Article 183 Monetary compensation

*„1. Just monetary compensation independent of the reimbursement of material damage shall pertain to the injured party for physical distress suffered, for mental distress suffered owing to a reduction in life activities, disfigurement, the defamation of good name or reputation, the truncation of freedom or a personal right, or the death of a close associate, and for fear, if the circumstances of the case, particularly the level and duration of distress and fear, so justify, even if there was no material damage.*

*2. Upon the decision on the request for the compensation of immaterial damage, as well as for the amount of the compensation, the court shall evaluate the importance of the violation of goods and the purpose to which this compensation shall serve, also in order not to support the tendencies that are not compatible with the nature and the social purpose thereof.“*

37. Therefore, the Court does not find anything in the judgment of the Basic Court to conclude that there has been an apparent arbitrary conduct of the court,

both in the process of determination of facts and in the application of the relevant positive legal rules.

38. Further, as regards the Applicant's allegation that „*The Court of Appeals modified the judgment of the Basic Court without any legal basis*”, the Court finds these allegations as ungrounded, because the Court of Appeals found in the judgment that the Basic Court concluded that it had completely and correctly determined the factual situation, but that the adjudicated amounts for non-pecuniary damage - pain and fear, very high and do not match the nature of the claimant's injuries or the applicable criteria, which in this case is part of the challenged judgment including the erroneous application of substantive law.
39. Based on the foregoing, it follows that the Court of Appeals concluded that the Basic Court had correctly determined the facts, but it had made erroneous conclusions, which led to an erroneous application of substantive law, and accordingly, rendered a different judgment.
40. The Court notes that such a position of the Court of Appeals is in accordance with Article 211 of the Law on Contested Procedure (hereinafter: the LCP), which reads as follows::

*“Article 201. The second instance court can change the decision of the first instance court in the college session, or on the basis of examination of the main issue directly through a decision, if it decides that one of the under mentioned causes are presenting the complaint:*

*[...]*

*d) if it considers that the factual state in decision of the first instance court has over passed the charge claim through which it accepted more than requested by the charge.”*

41. Further, as regards the Applicant's appealing allegations, that “*the Supreme Court rejected the revision against two judgments, while upholding two judgments that are in contradiction with the relevant law on self-responsibility and evidence*”, the Court finds that the Supreme Court in the proceedings upon the revision, did not deal with the Applicant's appealing allegations regarding the legality of the challenged judgments, as claimed by the Applicant in the Referral, but solely with the procedural issue provided for in Article 211 of the LCP. More specifically, the Supreme Court found that the revision does not meet the criteria set out in Article 211.2 of the LCP.

*“Article 211.2 Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3,000 €.”*

42. Based on all the foregoing, the Court concludes that it did not find anything to indicate in the present case that the substantive-legal rules in the present case were arbitrarily or unfairly applied to the Applicant's detriment. The Court also considers that the Applicant does not offer facts that could justify the claim that there has been a violation of the constitutional rights invoked by him,



which is why there are no *prima facie* elements indicating a violation of the constitutional rights under Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the ECHR, and that the examination on merits would be required.

### **Other allegations**

43. The Court further finds that the Applicant also alleges a violation of the rights and freedoms guaranteed by Article 10 of the ECHR (Freedom of expression). However, the Court also finds that he did not reason these allegations in a single word, in order that this Court could enter their examination, or that the court proceedings initiated by the Applicant in respect of monetary compensation, in any way raise questions regarding the rights protected by this Article. In this regard, the Court concludes that these allegations are ungrounded.
44. The Applicant also alleged that the regular courts put him in an unequal position during the court proceedings, thereby violating his rights guaranteed by Article 24 of the Constitution, in conjunction with Article 14 of the ECHR.
45. In this respect, the Court recalls that, according to ECtHR case law, the right to non-discrimination under Article 14 of the ECHR is an accessory right. This means that this article does not guarantee an independent and autonomous right to non-discrimination, but discrimination, under this article can only be invoked in relation to the "*enjoyment of the rights and freedoms guaranteed by the ECHR*". Although the finding of a violation of one of the guaranteed rights is not a prerequisite for the application of Article 14 of the ECHR, however, this Article will not be applicable unless the facts of a particular case fall "within the scope" of the guaranteed right (see ECtHR judgment, *Karlheinz Schmidt v. Germany*, Judgment of 18 July 1994, Series A No. 291-B, paragraph 22).
46. In the present case, the Court has already concluded that the Applicant's right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR has not been violated, which is why his allegations do not fall within the scope of these Articles, so that Article 14 of the ECHR cannot be applied.
47. Based on the above, the Court reiterates that it is the Applicant's obligation to substantiate his constitutional allegations and to submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (See: case of the Constitutional Court No. KI19/14 and KI21/14, Applicants: *Tafil Qorri and Mehdi Sylja*, Resolution on Inadmissibility of 5 December 2013).
48. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and, is to be declared inadmissible in accordance with Rule 39 (2) 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 20 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 25 September 2019, unanimously

## **DECIDES**

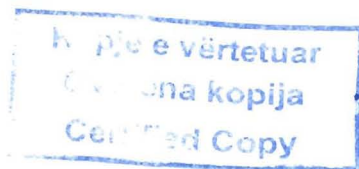
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Arta Rama-Hajrizi



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