



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

Prishtina, on 9 August 2021  
Ref.no.:RK1824/21

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI30/21**

Applicant

**Sylhane Sahiti**

**Request for constitutional review of Decision Rev. No. 185/2020, of the  
Supreme Court of Kosovo, of 24 June 2020**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by Sylhane Sahiti (hereinafter: the Applicant), represented by Jahir Bejta, from Skenderaj.

## **Challenged decision**

2. The Applicant challenges the Decision Rev. no. 185/2020 of the Supreme Court of Kosovo, of 24 June 2020.
3. The challenged Decision Rev. no. 185/2020 of 24 June 2020, of the Supreme Court, was served on the Applicant on 3 August 2020.

## **Subject matter**

4. The subject matter of the Referral is the constitutional review of the challenged Decision of the Supreme Court, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 53 [Interpretation of Human Rights Provisions] and Article 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 on Human Rights (hereinafter: ECHR) and Article 15 of the Universal Declaration of Human Rights (hereinafter: UDHR).
5. The Applicant also requested the return to the previous situation with regard to deadline for submitting the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), in accordance with Article 50 (Return to the Previous Situation) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), stating that due to "*health reasons*" of her representative was not able to submit the Referral within four (4) months, as defined in Article 49 (Deadlines) of the Law.

## **Legal basis**

6. The Referral is based on paragraph 1 and 7 of Article 113 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] and 50 [Return to the Previous Situation] of the Law and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

7. On 9 February 2021, the Applicant submitted the Referral to the Constitutional Court.
8. On 11 February 2021, the President of the Court appointed Judge Remzie Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.
9. On 18 February 2021, the Court notified the legal representative of the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
10. On 23 April 2021, the Court sent a letter to the Basic Court in Mitrovica – Branch in Skenderaj (hereinafter: the Basic Court) and requested the same to



bring the acknowledgment of receipt proving when did the Applicant receive the Decision Rev. no. 185/2020 of 24 June 2020 of the Supreme Court.

11. On 5 respectively 7 May 2021, the Basic Court submitted the requested acknowledgment of receipt by email and in hard copy.
12. On 17 May 2021, based on paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and the Court Decision KK-SP 71-2/21 was decided that Judge Gresa Caka-Nimani shall take over the duty of the President of the Court, after the end of the mandate of the current President of the Court, Arta Rama-Hajrizi, on 26 June 2021.
13. On 31 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision No. KK160/21 for the replacement of the presiding judges in the review panels, appointed the elected President of the Court Gresa-Caka Nimani, Presiding of the panel for the case KI30/21.
14. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court KK-SP 71-2/21, Judge Gresa Caka-Nimani took over the duty of the President of the Court, whilst pursuant to item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
15. On 28 June 2021, the President of the Court, Gresa Caka-Nimani, issued Decision K.SH.KI30/21, replacing the previous President Arta Rama-Harizi in her role as Presiding of the Review Panel with Judge Nexhmi Rexhepi.
16. On 28 July 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

17. On 22 October 2014, the Applicant filed a lawsuit with the Basic Court against the Government of the Republic of Serbia. In the lawsuit, the Applicant requested that the Government of the Republic of Serbia pays her the amount of 90100 (ninety thousand one hundred) euros, on behalf of material and non-material damage caused during the period 1998/1999.
18. On 29 February 2016, the Basic Court, by Decision [C. no. 343/2014], was declared out of jurisdiction from territorial point of view to decide on the Applicant's dispute, and on this basis dismissed the claim as impermissible.
19. On an unspecified date, the Applicant filed an appeal against the Decision of the Basic Court with the Court of Appeals, due to essential violation of the provisions of the contested procedure, proposing that the Court of Appeals approves her appeal and remand the case for retrial and reconsideration.



20. On 16 December 2019, the Court of Appeals by Decision [Ac. no. 4720/16] rejected the Applicant's appeal as ungrounded and upheld the Decision [C. no. 343/2014] of 29 February 2016 of the Basic Court.
21. On 31 January 2020, the Applicant filed a revision with the Supreme Court against the Decision of the Basic Court and the Court of Appeals, due to essential violation of the provisions of the contested procedure with the proposal that the challenged decisions be quashed and remand the case to the Basic Court for retrial and reconsideration.
22. On 24 June 2020, the Supreme Court, by Decision [Rev. no. 185/2020], rejected the Applicant's revision as ungrounded. The Supreme Court among others, noted:

*"[...] Therefore, from the reasons mentioned above, the claims of the revision do not stand, that in the present case the provisions of Article 28 of the LCP, to which the claimant refers, apply, which determines the jurisdiction of our courts in disputes with an international (foreign) element, as that they cannot be applied in this case because, here we are not dealing with foreign natural persons, nor with foreign legal persons, but with a foreign state, with which until now the state of Kosovo in the territory of which the damage was caused, no international agreement (bilateral, etc.) has been concluded on the jurisdiction of local courts for these types of disputes.*

*Also, in the present case the claimant's allegation of the revision with regard to the chosen territorial jurisdiction, in accordance with Article 47 and Article 51 of the LCP is not grounded, because according to the assessment of this Court, both courts have correctly assessed that according to the provision of Article 39.1 and 2 of the LCP to decide in this dispute against the Republic of Serbia the court of general territorial jurisdiction is the court in which territory is located the Headquarters of the Government of Serbia."*

### **Request for return to the previous situation**

23. The Applicant initially requests the return to the previous situation of the deadline for submitting the Referral to the Court, as defined in Article 50 (Return to the previous situation) of the Law.
24. The Applicant justifies the non-submission of her constitutional complaint within the deadlines, stating that *"due to the consequences of the pandemic I could not submit the abovementioned referral within the deadline, for the fact that the Director of the Association "Ngritja e Zërit" Jahir Bejta for months, starting from 16.12.2020 has not been at work, even the same is still recovering but came to the office of the association to complete my necessary documentation for filing the referral to the Constitutional Court"*.



## **Applicant's allegations**

25. The Applicant alleges that the decisions of the Supreme Court violated her rights guaranteed by Articles 21 [General Principles], Article 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.
26. The Applicant has three categories of the main allegations: (i) the application of the principle "per loci" [*ratione loci*], which, according to the Applicant, means that the regular courts have jurisdiction to review the lawsuits on the basis of the place where material damage has been caused; (ii) the obligation for the application of international human rights standards by the regular courts; (iii) their right to judicial protection of rights and the right of access to justice.
27. The Applicant initially refers to the issue of territorial jurisdiction, (namely the principle "*per loci*") and alleges that the regular courts "*have erroneously applied the applicable law with reference to the territorial jurisdiction of the Basic Court [...], because, the territorially competent court for adjudicating legal cases is always the court in which territory the crime was committed, the moral, namely material damage! This definition and valid legal position also coincides with the interest of the injured party, the principle of economy in judicial and administrative proceedings, as well as in accordance with the international principle – per loci, administration of claims based on the place where the crime was committed*".
28. The Applicant further refers to some examples from the international case law where, in her view, the World War II victims were allowed "*to file individual indictments in the domestic courts for compensation for damage caused by Germany*". In this regard, she specifies that in the cases of Greece and Italy, individuals have been given the opportunity to seek compensation for "*damages caused by Germany during the World War II in accordance with international principle 'per loci'*".
29. The Applicant referring to Article 21, paragraph 1 of the Constitution, alleges that the regular courts "*have not applied advanced international human rights standards. One of the standards is to enable the injured party to initiate the issue of compensation for moral and material damage caused as a result of direct action by the Serbian authorities [...]*".
30. The Applicant referring to Article 22 of the Constitution, alleges that whilst "*human rights guaranteed by Conventions, international agreements and instruments have priority over provisions of law and other acts of public institutions*", consequently, "*filing of claims before the domestic courts is also supported by Article 6 of the ECHR and item 15 of the UDHR [...]*".
31. The Applicant also alleges that "*the Obligation to Apply the Geneva Conventions of 1994 is also provided by the International Humanitarian Law of Kosovo*". According to the Applicant, the regular courts have violated the

constitutional provisions because they have not applied the provisions of international conventions, as a category of domestic legal order.

32. The Applicant, referring to Article 53 of the Constitution, states that *in the present case, even though Kosovo is not a member of the Council of Europe and consequently is not a signatory to the Convention, it does not in any way constitute an obstacle to the application of the Convention norms*".
33. The Applicant, referring to Article 54 of the Constitution, also states that *"they have been denied the right to judicial protection, the right of access to local justice and the institutional guarantee for the protection of human rights"*.
34. Finally, the Applicant requests the Court to annul the decisions of the regular courts.

### **Admissibility of the Referral**

35. The Court first examines whether the Referral has met the admissibility criteria set out in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
36. Returning to the circumstances of the present case, 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."*

37. The Court further also refers to the admissibility criteria, as specified in the Law. In this regard, the Court initially refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which establish:

#### **Article 47 (Individual Request)**

*"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.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

#### **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 [...].”*

38. With regard to these requirements, the Court notes that the Applicant is an authorized party, who challenges an act of a public authority, namely the Decision [Rev. no. 185/2020] of the Supreme Court of 24 June 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified her rights and freedoms that she alleges to have been violated, in accordance with the requirements of Article 48 of the Law. However, the Court must also assess whether the Referral was submitted to the Court within the legal deadline of four (4) months, as set forth in Article 49 of the Law.
39. In this regard, the Court notes that beyond the four (4) month criterion set out in Article 49 of the Law for submitting referrals before the Court according to the procedure established under paragraph 7 of Article 113 of the Constitution, respectively individual requests, is also item (c) paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure, which stipulates as follows:

Rule 39  
(Admissibility Criteria)

*“(1) The Court may consider a referral as admissible if:  
[...]*

*c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant,  
and  
[...].”*

40. In the circumstances of the present case, the Court recalls that the Applicant challenges the Decision [Rev. no. 185/2020] of the Supreme Court of 24 June 2020. The acknowledgment of receipt submitted to the Court by the Basic Court, confirms that the Applicant received the challenged Decision on 3 August 2020. The Applicant submitted her Referral to the Court on 9 February 2021. Consequently, it is not disputed that the Applicant's Referral was submitted after the legal deadline of four (4) months determined by Law and Rules of Procedure.
41. However, the Court recalls that the Applicant requests the Court to return to the previous situation, regarding the deadline for submitting the Referral to the Court, as set out in Article 50 of the Law.



42. In this context, the Court recalls that the Applicant argues that she did not submit the Referral to the Court within the time limit set by Article 49 of the Law, *“due to the consequences of the pandemic I could not submit the abovementioned referral within the deadline, for the fact that the Director of the Association “Ngritja e Zërit” Jahir Bejta for months, starting from 16.12.2020 has not been at work, even the same is still recovering but came to the office of the association to complete my necessary documentation for filing the referral to the Constitutional Court”*.
43. In the context of the Applicant’s request for return to the previous situation, the Court first recalls the content of Article 50 (Return to the Previous Situation) of the Law, which provides as follows:
- “If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired.”*
44. Based on the content of Article 50 of the Law, in order to approve a request for return to the previous situation, the following requirements must be met: (i) the Applicant must prove that without her fault she has not been able to submit the referral within the set deadline, respectively the four (4) month deadline set out in Article 49 of the Law; (ii) the Applicant should submit the request for returning to previous situation within fifteen (15) days from the removal of the obstacle; (iii) the Applicant should justify such a request; and (iv) less than one year or more have not passed from the day the deadline set by the Law for filing a referral with the Court, has expired. These criteria are cumulative.
45. In the circumstances of the present case and as explained above, the Court notes that based on the acknowledgment of receipt submitted to the Court by the Basic Court, the Applicant received the challenged Decision of the Supreme Court on 3 August 2020. Based on Article 49 of the Law, the referral should have been submitted by 3 December 2020. The same was submitted to the Court on 9 February 2021. In this context, the Court notes that not more than one year or more have passed from the day when the deadline set by the Law for filing a referral with the Court, has expired, and consequently one of the criteria set out in Article 50 of the Law has been met. However, the Court must also assess whether the other three criteria set out in Article 50 of the Law have been met, namely whether the Applicant (i) has proved that without her fault she has not been able to submit the referral within the deadline set out in Article 49 of the Law; (ii) has justified her request; and (iii) has submitted the request for returning to the previous situation within fifteen (15) days from the removal of the obstacle.
46. In this context, the Court recalls once again that the Applicant received the challenged Decision on 3 August 2020. The medical report which is included in the case file and which indicates the hospitalization of the Applicant’s representative, has the date of hospitalization of 16 November 2020, and the



date of discharge from the hospital of 2 December 2020. In the Applicant's request for return to the previous situation, there is no single justification regarding the impossibility of submitting the relevant referral to the Court, from the moment of the receipt of the Decision, respectively 3 August 2020 and until when her representative was diagnosed with Covid-19, respectively 16 November 2020, consequently for a period of three months. Furthermore, the Referral was submitted to the Court on behalf of the Applicant, namely Sylhane Sahiti, by her representative Jahir Bejta. In the Applicant's request for return to the previous situation, there is no single reasoning regarding the impossibility of the Applicant to submit the referral to the Court by herself.

47. The Court reiterates that the Court has a duty to approve or not the return to the previous situation, based on its assessment, in each case separately, if the criteria set out in Article 50 of the Law are met and which are cumulative. In the circumstances of the present case, based on the case file, the Court finds that (i) the Applicant has not proved that without her fault she has not been able to submit the referral within the set deadline, respectively the four (4) month deadline set out in Article 49 of the Law, because while it is not disputed that the Applicant's representative has been ill with Covid-19 since November 2020, there is no reasoning in her request for the impossibility to submit her Referral to the Court during August, September and October 2020 and moreover, there is no reasoning for the impossibility of the Applicant to submit the Referral to the Court by herself; (ii) in the same context, the Applicant does not prove that the obstacle was removed on 2 December 2020, the date from which her representative was discharged from the hospital, from which date the fifteenth (15) days deadline would begin to flow for submitting the referral to the Court; and (iii) for the same reasons, the request in question is unreasoned.
48. Consequently, the Court notes that in the circumstances of the present case, only one of the criteria set out in Article 50 of the Law has been met, namely the one-year period within which a request can be submitted to the Court requesting to return to the previous situation and consequently, the Court must find that, in the circumstances of the present case, the criteria set out in Article 50 of the Law for return to the previous situation have not been met, and find that the Referral was submitted outside the timeline set out in Article 49 of the Law.
49. The Court recalls that the purpose of the legal time limit of four (4) months, pursuant to Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, is to promote legal certainty by ensuring that cases raising constitutional issues are dealt with within a reasonable time and that past decisions are not continually open to challenge (see, among others, the case of the ECtHR, *Sabri Gunes v. Turkey*, Judgment of 29 June 2012, paragraph 39 and the references used therein, and see also, among others, the cases of the Court KI107/20, Applicant *Ismail Guri*, Resolution on Inadmissibility of 3 December 2020, paragraph 41; KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24; and KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39; KI163/20, Applicant "Inter-Eminex", Resolution on Inadmissibility of 5 March 2021, paragraph 53).

50. In conclusion, for the reasons elaborated above, the Court finds that: (i) the Referral does not meet the criteria set out in Article 50 of the Law for returning to the previous situation; and consequently (ii) the Referral was filed outside the legal deadline set out in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and therefore, the Court could not examine the merits of the case, respectively, if by the challenged Decision the constitutional rights of the Applicant have been violated.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Article 20, 49 and 50 of the Law and Rules 39 (1) (c) and 59 (2) of the Rules of Procedure, on 28 July 2021, unanimously:

### **DECIDES**

- I. TO REJECT the Applicant's request for return to previous situation with regard to the deadline for submitting the Referral to the Constitutional Court;
- II. TO DECLARE the Referral inadmissible;
- III. TO NOTIFY this Decision to the parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Remzie Istrefi-Peci

**Kopje e vërtetuar  
Overena kopia  
Certified Copy**

Gresa Caka-Nimani

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