



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

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Prishtina, 2 June 2017  
Ref. No.:RK 1076/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI58/16**

Applicants

**Kadri Emini**  
**Skender Emini**  
**Flamur Emini**

**Constitutional review of Judgment Pml. No. 8/2016, of the Supreme  
Court of Kosovo, of 26 January 2016**

### **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 Kadri Emini, Skender Emini and Flamur Emini residing in Komoran (hereinafter: the Applicants), who are represented by Kadri Emini.

## **Challenged decision**

2. The challenged decision is Judgment Pml. No. 8/2016, of the Supreme Court of Kosovo, of 26 January 2016, which was served on the Applicants on 10 February 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision. The Applicants have not specified what constitutional provision has been violated.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on 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 24 March 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 April 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërxhaliu Krasniqi.
7. On 13 June 2016, the Applicants submitted to the Court the Referral form.
8. On 1 July 2016, the Court notified the Applicants about the registration of the Referral, and requested from them to submit to the Court the judgment P.No.1833/2013, of 22 August 2014, of the Basic Court in Prishtina, as well as the judgment PA1.No. 175/2015, of 16 March 2015, of the Court of Appeals the additional information. On the same date, the Court sent a copy of the Referral to the Supreme Court.
9. On 11 July 2016, the Applicants submitted to the Court the requested documents.
10. On 8 May 2017, the Review Panel reviewed the report of Judge Rapporteur and unanimously proposed to the Court the inadmissibility of the Referral.

## **Summary of facts**

11. On 16 August 2011, as a result of a dispute between two families, between the Applicants on the one hand, and L. V. and R. V. O the other hand, a physical conflict occurred between them.
12. On 30 April 2013, the Basic Prosecution Office in Prishtina, filed an indictment against the Applicants and other persons involved in the conflict.

13. On 22 August 2014, the Basic Court in Prishtina (Judgment P. no. 1833/2013), found the Applicant Skender Emini and L. V. and R. V. guilty of the commission of the criminal offence in co-perpetration under Article 188 [Light bodily injury] of the Criminal Code of the Republic of Kosovo, by imposing on them a fine. The Applicants Kadri Emini and Flamur Emini were acquitted of charges, because it was not proved that they have committed criminal offence.
14. On an unspecified date, R. V. and L. V. on one side, and the Applicant Skender Emini on the other, filed an appeal with the Court of Appeal of Kosovo, on the grounds of essential violation of the criminal procedure provisions, erroneous and incomplete determination of the factual situation, requesting that the latter be acquitted of charges. The Applicants Kadri Emini and Flamur Emini filed the appeal with the Court of Appeal due to the decision on the criminal sanction, requesting that more severe punishment be imposed on R. V. and L. V.
15. On 16 March 2015, the Court of Appeal of Kosovo (Judgment PA1. no. 175/2015) rejected the appeals of the Applicants and of R. V. and L. V., as ungrounded and upheld Judgment P. no. 1833/2013, of the Basic Court of 22 August 2014. The reasoning further reads *"the appealing allegations of [...] regarding essential violations are not grounded, because the appealed judgment does not contain essential violations of the criminal procedure provisions [...] The enacting clause of the appealed judgment is clear, does not contain contradictions with itself or with its reasoning [...]."*
16. On an unspecified date, the Applicants filed request for protection of legality with the Supreme Court against Judgment PA1. No. 175/2015, of the Court of Appeal of 16 March 2015.
17. On 26 January 2016, the Supreme Court (Judgment Pml. No. 8/2016) rejected the request for protection of legality as ungrounded. In addition, the Judgment reads *"this Court supports in entirety the legal position of both courts that in the actions of the convicts exist the subjective and objective elements of the criminal offence [...] In the present case, the request for protection of legality was filed by the injured, therefore, the persons who according to the provisions above do not enjoy this right."*

### **Applicant's allegations**

18. The Applicants allege that the challenged decision violated their rights guaranteed by the Constitution, by not specifying what constitutional provision has been violated.
19. The Applicants allege in essence *"We consider that there has been a legal violation, that the persons who committed criminal offence were punished for light bodily injury"*. According to the Applicants, the persons who have committed the criminal offence should be imposed a more severe punishment.
20. The Applicants also allege that as a result of a dispute that they have with the family they are in conflict with, the latter restricts freedom of movement to the

Applicants making impossible for them to work their land. The Applicants do not relate these allegations to the challenged decision.

### **Admissibility of Referral**

21. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and in the Rules of Procedure.

22. In this respect, the Court refers to Article 113, paragraphs 1 and 7 [Jurisdiction and Authorized Parties] of the Constitution, which establishes that:

*“(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.*

23. The Court further refers to Article 48 [Accuracy of the Referral] of the Law, which provides:

*“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. Furthermore, the Court takes into account Rule 36 (1) (d) and (2) (a) of the Rules of Procedure, which foresees:

*(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:*

*(...)*

*(a) the referral is not prima facie justified, or*  
*(...)”.*

25. In the present case, the Court considers that the Applicant has met the procedural requirements of Article 113.7 of the Constitution. However, to determine the admissibility of the Referral, the Court should further assess whether the Applicants have fulfilled the requirements of Article 48 of the Law and the admissibility requirements established in Rule 36 of the Rules of Procedure.

26. The Court recalls that the Applicants do not indicate what rights and freedoms have allegedly been violated. In addition, they do not indicate what Article (Articles) of the Constitution has been violated.
27. The Court notes that the Applicants in the Referral, in the essence are not satisfied with the determination of the factual situation by the regular courts, and allege that *"We consider that there has been a legal violation, that the persons who committed criminal offence were punished for light bodily injury [...]"*.
28. In this respect, the Court notes that on all the grounds filed by the Applicants before the regular courts, the regular courts answered and reasoned the allegations of the parties. In fact, the Court of Appeal reviewed extensively and comprehensively the Applicants' allegations.
29. In this respect, the Court refers to the Judgment of the Supreme Court, which concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible, and that it contained sufficient reasons and decisive facts for rendering a lawful decision. In the Judgment of the Court of Appeal, among the others, reads *"...by correct determination of the factual situation, the accused L. V., R. V. and Skender Emini were found guilty for this criminal offence and they were fined [...] the punishment imposed on the accused by the first instance court is proportionate with the intensity of social danger of the criminal offence and the degree of criminal liability of the accused as executors [...]"*.
30. In these circumstances, the Court considers that the Applicants have not substantiated nor have they justified their allegation on constitutional basis for violation of human rights and fundamental freedoms guaranteed by the Constitution, because the facts presented by them do not show that the regular courts have denied them the rights guaranteed by the Constitution.
31. As regards the allegations of other applicants, the Court does not enter the reasoning of these allegations because it considers that the Applicant did not relate these claims to the challenged decisions, and, moreover, these are the relations between the third parties, therefore the Applicants by the facts presented in the Referral failed to build any constitutional allegation.
32. The Court notes that the Applicants failed to prove that the court proceedings, viewed in entirety, were unfair or arbitrary, in order that the Court may consider any constitutional violation.
33. The Court recalls that the fact that the Applicants are not satisfied with the outcome of the proceedings cannot of itself raise an arguable claim of a breach of the Constitution (see: case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005).
34. Thus, the Court considers that the admissibility requirements established in the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure, have not been met.



35. Therefore, the Referral is inadmissible as manifestly ill-founded on constitutional basis, in accordance with Rule 36 (1) (d) and (2) (a) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (a) of the Rules of Procedure, on 8 May 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; and
- IV. TO DECLARE this Decision effective immediately;

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Arta Rama Hajrizi