



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

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Prishtina, 23 October 2014  
Ref. No.:RK720/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI229/13**

Applicant

**Pashk Thaqi, Mark Thaqi and Linda Thaqi**

**Constitutional review of Judgment Rev. no. 147/2013 of the Supreme  
Court of the Republic of Kosovo dated 3 July 2013**

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

composed of

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge, and  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Pashk Thaqi, Mr. Mark Thaqi and Mrs. Linda Thaqi residing in Prizren (hereinafter: the “Applicants”) represented by Mrs. Zahide Gjonaj, lawyer from Prishtina.

## **Challenged decision**

2. The Applicants challenges Judgment Rev. no. 147/2013 of the Supreme Court, dated 3 July 2013, which was served to them on 15 August 2013.

## **Subject matter**

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court Rev. no. 147/2013 dated 3 July 2013.
4. The Applicants allege that the challenged judgment was adopted in violation of their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in particular Article 31 [Right to Fair and Impartial Trial]. The Applicants also claim that their rights guaranteed by the Article 6 of the European Convention on Human Rights (hereinafter: the "ECHR") have been violated.

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Proceedings before the Constitutional Court**

6. On 16 December 2013, the Applicants sent by post the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), which arrived at the Court on 19 December 2013.
7. On 15 January 2014, the President of the Court, with Decision No. GJR. KI229/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI229/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 6 February 2014, the Supreme Court was notified of the Referral.
9. On 23 September 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

10. On 13 November 2009, the applicants were involved in a traffic accident.
11. On 12 December 2009, the Applicants submitted a claim before the Municipal Court in Rahovec (hereinafter: the "Municipal Court") against the insurance company "Kosova e Re".

12. On 15 September 2011, the Municipal Court (Judgment C. no. 384/2009) partially approved the Applicants' request and ordered the insurance company to compensate the specified amount mentioned in the Judgment.
13. On 29 October 2011, the Applicants filed an appeal to the District Court in Prizren (hereinafter: the "District Court") due to substantial violation of provision of the contested procedure and erroneous application of the substantive law for part II of the Judgment.
14. On 19 November 2011, the District Court (Judgment Ac. no. 483/2011) partly approved the appeal submitted by the Applicants in relation to paragraph II of the Judgment in which included *"that the respondent is obliged to compensate the claimant the legal interest rate until the final payment"*. In relation to the other part of the appeal the District Court rejected the appeal and confirmed the Judgment of the Municipal Court dated 15 September 2011. The appeal of the Insurance Company "Kosova e Re" was rejected in its entirety.
15. The insurance company submitted a request for revision before the Supreme Court.
16. On 3 July 2013, the Supreme Court (Judgment Rev. no. 147/2013) partially approved the request for revision submitted by the Insurance Company "Kosova e Re".
17. The revision of the respondent filed against judgment of District Court in Prizren, Ac. no. 483/2011 of 19 November 2012 is rejected as ungrounded, in the part that has to do with compensation of material damages for care of another person and food expenses. While part I of the Judgment of the District Court in Prizren, Ac. no. 483/2011 of 19 November 2012 was modified, thus lowering the amount of compensation to be awarded to the applicants.
18. In the reasoning of the challenged judgement it was stated that *"The Supreme Court of Kosovo found that the courts of lower instances have correctly and completely determined the factual situation, have correctly applied the material law in the part that is referred to the compensation of the material damage to the claimants..."*

[...]

*"According to the assessment of the Supreme Court of Kosovo, the adjudicated amount by the first instance court in the part that is referred to the non-material damage to the claimants ... is not adequate with the nature of the compensation of non-material and material damages and by taking into account the importance of the level of goods and the purpose to which this compensation serves to, as it was provided by Article 200, para.1 and 2 of LOR, this Court, by partly approving the respondent's revision, modified the judgment of the first instance court, so that in the name of non-material damage as described above, admitted to claimants the adjudicated amount as per enacting clause of this court judgment. It rejected the claimants' statement of claim beyond the adjudicated amounts as ungrounded".*

### **Applicants' allegation**

19. The Applicants alleges that the Judgment of the Supreme Court *"violated their rights under article 31 of the Constitution, Article 54 of the Constitution and Article 6 of the ECHR and Article 219 of the LCP because a copy of the revision filed by the respondent "Kosova e Re" has not been provided to them."*
20. In addition the Applicants request from the Constitutional Court to *"quash the Judgment of the Supreme Court and remand the case back for retrial"*

### **Admissibility of the Referral**

21. First of all, the Court examines whether the Applicants have fulfilled the admissibility requirements.
22. In this respect, the Court refers to Article 48 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.*

23. The Court also takes into account Rule 36 (1) c) and (2) b) of the Rules of Procedure, which foresees:

*(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.*

*(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.*

24. In this respect, the Court notes that the Applicants allege that *"[...] a copy of the revision filed by the respondent "Kosova e Re" has not been provided to them [...]."*
25. The Court reiterates that it can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
26. In the present case, the Court considers that the Applicants have not substantiated a claim on constitutional grounds and have not explained and proved how and why their rights and freedoms have been violated by the decision of the Supreme Court which rejected as ungrounded the part that has to do with compensation of material damages for care of another person and food expenses, while amending the other part of the Judgment of the District Court.

27. In fact, the Applicants has not substantiated the allegation based on a constitutional violation and did not provide relevant evidence showing that their rights and freedoms protected by the Constitution have been violated because “[...] a copy of the revision filed by the respondent “Kosova e Re” has not been provided to them [...]”. The Applicants have failed to argue how this amounts to a constitutional violation. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint.
28. The Court emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
29. Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
30. Therefore, pursuant to Rule 36 (1) c) of the Rules of Procedure, the Referral is manifestly ill-founded and thus it is inadmissible.

### FOR THESE REASONS

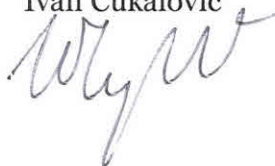
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c) and 56 (2) of the Rules of Procedure, on 23 September 2014, unanimously

### DECIDES

- I. TO REJECT the Referral as 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**

Ivan Čukalović



**President of the Constitutional Court**

Prof. Dr. Enver Hasani

