



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

Prishtina, on 31 July 2017
Ref. No.: RK 1110/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI30/17

Applicant

Muharrem Nuredini

**Constitutional review of Judgment Rev. No. 206/2016, of the Supreme
Court, of 13 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 Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Muharrem Nuredini from the village Sllatinë e Epërme, Municipality of Viti (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment (Rev. No. 206/2016) of the Supreme Court of Kosovo of 13 October 2016 (hereinafter: the Supreme Court) and Judgment (CA. No. 4130/13) of the Court of Appeals of Kosovo, of 18 May 2016 (hereinafter: the Court of Appeals). The Judgment of the Supreme Court was served on the Applicant on 14 November 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged judgments, which allegedly violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and the European Convention on Human Rights (hereinafter: the ECHR). The Applicant did not specify the constitutional provisions or any right of the ECHR he considers has been violated.

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 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 9 March 2017, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral, submitted through mail service on 27 February 2017.
6. On 7 April 2017, 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 Gresa Caka-Nimani.
7. On 19 April 2017, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court and to the Insurance Company "Iliria", as a respondent to the proceedings before the regular courts (hereinafter: the respondent).
8. On 9 May 2017, the Applicant submitted additional documents to the Court, including the respondent's revision and the Applicant's response to the revision.
9. On 4 korrik 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 6 November 2010, in a traffic accident in Sllatina village, the Applicant was hit by the driver of the “Golf” vehicle, insured to the respondent, causing him serious bodily injury.
11. On an unspecified date, the Applicant filed a claim against the respondent for compensation of material and non-material damage caused in the accident.
12. On 10 July 2013, the Basic Court in Gjilan-Branch in Viti, by Judgment C. No. 269/2010 (hereinafter: the Basic Court) approved the Applicant's statement of claim as partially grounded and obliged the respondent to compensate the Applicant a certain amount for material and non-material damage, while rejected the statement of claim for a part of the request, as ungrounded.
13. On 19 November 2013, the respondent filed an appeal against the Judgment of the Basic Court (C. No. 269/2010) requesting the case to be remanded for reconsideration and retrial, on the grounds of *“essential violations of the provisions of [Law on Contested Procedure] LCP, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.”*
14. On 26 November 2013, the Applicant replied to the appeal, claiming that the Judgment of the Basic Court was fair and based on the law, while the claims of the respondent were ungrounded, proposing that the respondent's appeal be rejected, while the Judgment of the Basic Court be upheld.
15. On 18 May 2016, the Court of Appeals (CA. No. 4130/13) partially approved the respondent's appeal and modified the Judgment of the Basic Court, by reducing the amount of compensation for the non-material damage in terms of physical pain, fear, reduce of overall life activity and light bodily disfigurement.
16. On an unspecified date, the respondent submitted a revision to the Supreme Court due to erroneous application of the substantive law proposing that both judgments of the lower instance courts be modified with respect to the adjudicated amounts for non-material damage or that it be quashed and the case be remanded to the first instance court for retrial.
17. The Applicant did not submit a revision against the Judgment of the Court of Appeals, but only a response to the revision by proposing that the revision of the respondent be rejected, whereas the amounts adjudicated be modified to the extent of the amounts adjudicated by the Basic Court.
18. On 13 October 2016, the Supreme Court (Rev. No. 206/2016) rejected the revision of the respondent as ungrounded.
19. On 6 January 2017, the Applicant submitted to the Office of the State Prosecutor a proposal for filing a request for protection of legality against the Judgment of the Supreme Court and the Court of Appeals.

20. On 18 January 2017, the Office of the Chief State Prosecutor notified the Applicant that the *“Office of the Chief State Prosecutor cannot file a request for protection of legality, because pursuant to Article 245.3 of Law on Contested Procedure, request for protection of legality is not allowed against the decision that was taken during revision or request for protection of legality by the court which had competencies to decide for that legal remedy, which in the present case is the Supreme Court.”*

Applicant’s allegations

21. The Applicant does not specify the constitutional rights which allegedly have been violated by the Supreme Court, respectively, the Court of Appeals, but alleges that the Judgments of the Supreme Court and the Court of Appeals *“violated the legal provisions to the detriment of [the Applicant]”* and violated the rights under the ECHR and the rights *“guaranteed by the Constitution of Kosovo.”*
22. Regarding the Judgment of the Supreme Court (Rev. No. 206/2016), the Applicant considers that the Supreme Court, when deciding upon the revision filed by the respondent and the respondent's response to the revision does not consider any fact, evidence or circumstance filed by the Applicant and rejects the revision.
23. Regarding the Judgment of the Court of Appeals (CA. No. 4130/13), the Applicant alleges that *“the Court of Appeals [...] modifies the first instance court judgment by seriously injuring me”* whereas *“it does not elaborate the written expertise at all, nor the statement of the expert in the court session, whereas is called in this expertise while decreasing the amounts and expenses so staggering by intervening in every part of the judgment of [the Basic Court], and by not referring to the question of responsibility of 10 % in the way that every appealed allegation of the respondent is approved”*.
24. Regarding the proposal for protection of legality submitted by the Applicant to the State Prosecutor, the Applicant alleges that this proposal was rejected by the State Prosecutor through notification KLMC. No. 01/2017 of 18 January 2017, *“although we have presented evidence of serious violations by the Court of Appeals.”*
25. Finally, the Applicant proposes to the Court to approve the Referral and the case be quashed by remanding it for reconsideration to the Basic Court, or the Judgment of the Court of Appeals be modified, taking into account the Judgment of the Basic Court.

Admissibility of the Referral

26. The Court first examines whether the Applicant has met the admissibility requirements established in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.
27. 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.”

28. In addition, the Court refers to Article 47 [Individual Requests] of the Law, which establishes:

“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.”

29. The Court also takes into account Rule 36 [Admissibility Criteria], subparagraph (1) (b) and (c) of the Rules of Procedure, which provides:

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

[...]

b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted;

[...].”

30. The Court notes that the Applicant alleges that the Supreme Court did not take into account the facts and evidence submitted by the Applicant in response to the revision even though the Applicant *“had hope that the case would be remanded for retrial.”*
31. However, the Court notes that the Applicant did not submit a revision against the Judgment of the Court of Appeals (CA. 4130/13), but he challenged the Judgment of the Court of Appeals by responding to the revision filed by the respondent, by requesting that *“the revision of the respondent be rejected, and the amounts adjudicated be modified”* in favor of the Applicant.
32. In this regard, the Supreme Court *“reviewed the Judgment of the Court of Appeals only by the revision of the respondent within the meaning of Article 215 of the Law on Contested Procedure”* which specifies that *“the court of revision reviews the challenged judgment only in its challenged part by revision and only within the limits of the reasons indicated in the revision.”*
33. Accordingly, the Court notes that the Supreme Court did not review the Judgment of the Court of Appeals with regard to the Applicant's request to modify the amounts adjudicated by the Court of Appeals in favor of the Applicant since the Applicant did not file a revision against the Judgment of the Court of Appeals (CA. No. 4130/13), but only a response to the respondent's revision, which revision was rejected by the Supreme Court as ungrounded.

34. As regards the present case, the Court finds that the Applicant has not exhausted effective legal remedies available according to the applicable laws, in this case the revision, in order for the Supreme Court to assess his allegations of legal violation by the Court of Appeals.
35. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (See Resolution on Inadmissibility in Case KI142/13, *Fadil Maloku*, of 22 October 2014, Constitutional Review of the Decision of the President of the Republic of Kosovo, No. 686-2013 of 6 September 2013).
36. The Court refers also to the principle of subsidiarity, which requires that the Applicants exhaust all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have its case declared inadmissible by the Constitutional Court, when failing to avail itself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings.
37. This failure to use this possibility shall be understood as a giving up of the right to further object the violation and complain (*See, Resolution in Case KI139/12, Besnik Asllani, constitutional review of Judgment PKL. no. 111/2012 of Supreme Court, of 30 November 2012, paragraph 45; and cases of ECtHR Selmouni v. France, Application no. 25803/94, Judgment of 28 July 1999, paragraph 74; Kudla v. Poland, Application No. 30210/96 of 26 October 2000, paragraph 152*).
38. For the reasons mentioned above, the Court finds that the Referral does not meet the admissibility requirements as the legal remedies have not been exhausted provided by Article 113.7 of the Constitution, Articles 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, therefore, as such the Referral is to be declared inadmissible on constitutional basis.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and in accordance with Rule 36 (1) (b) of the Rules of Procedure, on 4 July 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. This Decision is effective immediately.

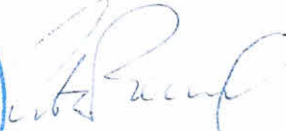
Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi