



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

Pristine, 21 September 2012
Ref. No.: RK307/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI55/12

Applicant

Avni Shabani

**Constitutional Review of the Judgment of the Supreme Court, Rev. no.
132/2009, dated 17 January 2012.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
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. Avni Shabani (hereinafter: the “Applicant”), represented by Mr. Nysret Mjeku, a practicing lawyer from Pristina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no. 132/2009, of 17 January 2012, which was served on him on 12 March 2012.

Subject matter

3. The Applicant alleges that the abovementioned decision violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 54 [Judicial Protection of Rights].

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (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 Court

5. On 22 May 2012, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 5 July 2012, the President of the Constitutional Court, with Decision No.GJR.KI-55/12, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-55/12, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Ivan Čukalovič.
7. On 25 July 2012, the Referral was communicated to the Supreme Court.
8. On 21 September 2012, 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

9. In 2007, the Applicant's son was killed in a car accident. Consequently, the Applicant filed a claim against the insurance company for compensation for material and non-material damages with the Municipal Court in Lipjan.
10. On 17 September 2007, the Municipal Court of Lipjan (Judgment C. no. 110/07) approved the Applicant's claim for compensation for material and non-material damages. The insurance company filed a complaint to the District Court in Pristina against this Judgment.
11. On 11 March 2008, the District Court in Pristina (Judgment Ac. no. 897/2007) partially rejected the complaint of the insurance company as unfounded and upheld the judgment of the Municipal Court. In respect to the interest rate, the District Court in Pristina approved the complaint of the insurance company and changed the amount of the interest rate. The insurance company filed a revision with the Supreme Court against this Judgment of the District Court.
12. On 17 January 2012, the Supreme Court (Judgment Rev. no. 132/2009) partially approved the request for revision and changed the judgment of the lower courts as to the amount for compensation for material and non-material damages. The Supreme

Court held that the lower courts as to the amount granted for compensation for material and non-material damages was too high and not in accordance with Article 200 para.2 in conjunction with Article 201 of the Law on Obligations.

Applicant's allegations

13. The Applicant alleges that the Supreme Court judgment was taken in violation of Article 54 [Judicial Protection of Rights] of the Constitution, because there are "*[...] many cases when the Supreme Court by request of injured parties increases these amounts, while we do not have cases decreasing them, and this is the first case of this kind that the Supreme Court of Kosovo has adjudicated. By this judgment the claimant has been put into unequal position with other claimants [...].*"

Assessment of the admissibility of the Referral

14. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
15. In this respect, the Court refers to Rule 36 (1.c) of the Rules of Procedure which provides that "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
16. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by 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).
17. In sum, the Court 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).
18. Moreover, the Applicant merely disputes whether the Supreme Court entirely applied the applicable law and disagrees with the courts' factual findings with respect to his case and the amount granted for compensation for material and non-material damages.
19. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
20. Therefore, the Applicant did not show why and how the Supreme Court violated his rights as guaranteed by the Constitution.
21. It follows that the Referral is inadmissible because it is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

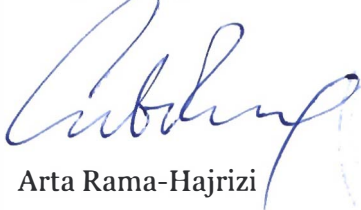
FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and 56 (2) of the Rules of Procedure, on 21 September 2012, unanimously

DECIDES

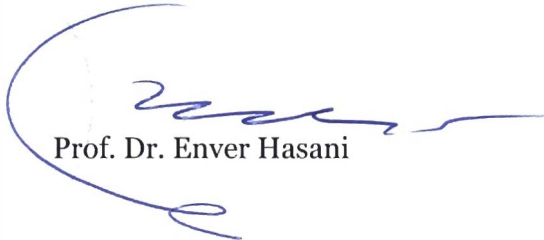
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Arta Rama-Hajrizi

President of the Constitutional Court



Prof. Dr. Enver Hasani