



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

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Prishtina, 5 October 2017  
Ref. No.:RK 1131/17

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI28/17**

Applicant

**Azem Gashi and Arbenita Gashi**

**Constitutional review of  
Judgment Rev. No. 262/2016, of the Supreme Court of Kosovo,  
of 3 November 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 Referral was submitted by Azem Gashi and Arbenita Gashi, residing in Prishtina, (hereinafter: the Applicants), who are represented by Zaim Istrefi, a lawyer from Prishtina.

## **Challenged decision**

2. The Applicants challenge Judgment Rev. No. 262/2016, of the Supreme Court of Kosovo, of 3 November 2016, which was served on them on 16 November 2016.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of Judgment Rev. No. 262/2016 of the Supreme Court of Kosovo, of 3 November 2016, which allegedly violated the Applicants' rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 7 March 2017, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 April 2017, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Bekim Sejdiu and Gresa Caka-Nimani.
7. On 13 April 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.
8. On 17 July 2017, the Applicants' representative submitted to the Court Judgment P. No. 2850/08 of the Municipal Court in Prishtina, of 10 February 2012.
9. On 6 September 2017, the Review Panel, after having considered the report of the Judge Rapporteur, unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

10. On 7 August 2008, the Applicants sustained serious bodily injury in a traffic accident caused by the user of the "Sigal Uniqe Group Austria" Insurance Company in Prishtina (hereinafter: Sigal Company).

11. On 10 February 2012, the Municipal Court in Prishtina [Judgment P. No. 2950/08] found guilty G.B, the vehicle security user of Sigal Company, for the criminal offense "*Endangering Public Traffic*" under Article 297 par. 5 in conjunction with paragraphs 3 and 1 of the Criminal Procedure Code.
12. On 15 October 2012, the Applicants filed a lawsuit for compensation of non-material damage with the Basic Court against Sigal Company by specifying the compensation (the amount) for all forms of damage caused by the accident.
13. On an unspecified date, Sigal Company filed a response to the lawsuit, challenging the amount of compensation, and giving the Applicants an offer for judicial reconciliation. The Applicants did not accept the offer for judicial reconciliation.
14. On 14 December 2012, the Municipal Court in Prishtina (Judgment C. No. 1793/08) partially approved the statement of claim and obliged Sigal Company to compensate the non-material damage to the Applicants caused by the user of the security of the Sigal Company.
15. On 25 April 2013, Sigal Company filed an appeal with the Court of Appeals of Kosovo against Judgment C. No. 1793/08 of the Municipal Court in Prishtina of 14 December 2012, on the grounds of essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
16. On 10 March 2016, the Court of Appeals of Kosovo (Judgment CA. No. 3287/13), partially modified Judgment C. No. 1793/08 of the Municipal Court in Prishtina, of 14 December 2012, obliging Sigal Company that on behalf of the damage sustained as a result of the traffic accident, pay the Applicants less than the amount determined by the Municipal Court. In the Judgment it is reasoned that:
 

*"[...] when rendering the judgment, it erroneously applied the substantive law when determining amounts to be compensated for non-material damage as in the enacting clause of the appealed judgment considering them being disproportionate with criteria and living standard in Kosovo, i.e. exceeding the amounts that would be adequate for satisfaction and in compliance with provisions of Article 200 of LOR of 1978 as well as with the case law created by dealing with similar cases in Kosovo including the stances of the Supreme Court [...]."*
17. On 6 May 2016, the Applicants submitted a revision to the Supreme Court against Judgment CA. No. 3287/13 of the Court of Appeals of 10 March 2016, on the grounds of erroneous application of the substantive law.
18. On an unspecified date, Sigal Company submitted a revision to the Supreme Court, due to "*exceeding the statement of claim with the proposal to modify the challenged judgment and to partially approve the statement of claim of the claimants.*"

19. On 3 November 2016, the Supreme Court of Kosovo (Judgment Rev. No. 262/2016) rejected the revision of Applicants and of the Sigal Company as inadmissible, reasoning that the second instance court had correctly applied the provisions of the substantive law and by fully upholding Judgment CA. No. 3287/13 of the Court of Appeals, of 10 March 2016.

### **Applicant's allegations**

20. The Applicants allege that the decisions of the regular courts violated their constitutional rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution, as well as Article 6 [Right to a fair trial] of the ECHR.
21. The Applicants allege that *“the Court of Appeals of Kosovo and the Supreme Court of Kosovo in their judgments stated above, did not provide satisfactory reasoning as to why they modified the decision rendered by the Municipal Court of Kosovo, having in mind that in Article 200 of LOR is determined the purpose of compensation; whereas in this specific case, the applicants were subject to uprooting of their material goods; therefore, the decision of the Municipal Court would have served them as a fair redress [...].”*
22. The Applicants further allege that *“the Court of Appeals and the Supreme Court in their judgments did not refer to any factual and legal reasoning on how and why they have modified the Judgment of the first instance court.”*
23. The Applicants request the Court to annul Judgment CA. No. 3287/13 of the Court of Appeals of Kosovo of 10 March 2016 and Judgment Rev. No. 262/2016 of the Supreme Court of 3 November 2016, and to uphold Judgment C. No. 1783/08 of the Municipal Court in Prishtina, of 14 December 2012.

### **Admissibility of the Referral**

24. The Court first examines whether the admissibility requirements established in the Constitution and as further specified in the Law and the Rules of Procedure have been met.
25. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:  
  

*“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.”*
26. However, 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.”*

27. In this regard, the Court further refers to Rule 36 of the Rules of Procedure, which provides:

*(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:*

*[...]*

*(d) the Applicant does not sufficiently substantiate his claim.*

28. In the present case, the Court notes that the Applicants are authorized parties, that they have exhausted all available legal remedies and filed the Referral within a prescribed legal period. However, the Court should further examine whether the requirements laid down in Article 48 of the Law and provided for in Rule 36 of the Rules of Procedure have been met.

29. The Applicants allege that Judgment CA. No. 3287/13, of the Court of Appeals of Kosovo, of 10 March 2016 and Judgment Rev. No. 262/2016 of the Supreme Court of 3 November 2016, violated their rights guaranteed by the Constitution, namely the right to fair and impartial trial and to judicial protection, due to the reduction of the value for compensation for the non-material damage as a result of injury sustained in the traffic accident.

30. In this regard, the Court refers to Article 31 of the Constitution, which establishes:

*“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations [...] within a reasonable time by an independent and impartial tribunal established by law.”*

31. In addition, the Court takes into account Article 6.1 of the ECHR, which stipulates:

*“In the determination of his civil rights and obligations, everyone is entitled to a fair hearing by a tribunal.”*

32. The Court recalls that the Applicants allege that the Court of Appeals and the Supreme Court did not sufficiently reasoned their decisions in the parts in which Judgment C. No. 1793/08 of the Municipal Court in Prishtina of 14

December 2012 was annulled and that they did not correctly determine the factual situation.

33. The Court notes that the Applicants alleged in the Supreme Court the violation of the substantive law. The Court considers that the Judgment of the Supreme Court addressed and decided on the grounds of the aforementioned appeal. For these reasons, the Judgment of the Supreme Court is now final decision on this contested matter.
34. In this regard, the Court refers to Judgment Rev. No. 262/2016 of the Supreme Court of 3 November 2016, which concluded that the Court of Appeals, by Judgment Ac. No. 3287/2013, of 10 March 2016 has correctly applied the provisions of the substantive law.
35. The Supreme Court in Judgment Rev. No. 262/2016 of 3 November 2016 held that *“the second instance court has correctly applied the substantive law provisions when it partially approved the respondent’s appeal ad modified the first instance judgment [...] the challenged judgment does not contain substantial violations of provisions of the contested procedure which this Court shall ex officio take care of. Regarding the adjudicated amounts by the second instance court (amended part) and in relation to abovementioned forms of non-material damages, the provision of Article 200 of LOR, in conjunction with Article 323 of LCP was correctly applied when taken into consideration conclusions and recommendations of respective medical experts [...] Assessment of the redress for non-material damage (as a satisfaction that does not have profit - lucrative purposes) shall present application of the substantive law.”*
36. The Court considers that the Supreme Court not only confirmed the reasons given in the Judgment CA. No. 3287/13 of the Court of Appeals of Kosovo of 10 March 2016, but also addressed the essential issues related to the allegation of *“a violation of the substantive law.”*
37. In this regard, the Court considers that the Supreme Court assessed the evidence in its entirety by analyzing the facts and considering that *“when determining the amounts for redress on certain forms of non-material damage and on the fear as a freestanding non-material damage, the Court shall take care on significance of the damaged wealth and on the purpose such a redress serves under Article 200 of LOR; furthermore it shall take care to not give favors to purposes that are not in compliance with nature of such redress of non-material damage [...]. The determined amount by the second instance court, regarding the forms of non-material damage stated above and according to assessment of this court, are realistic and in compliance with legally envisaged criteria and in harmony with the case law.”*
38. Regarding the Applicants' allegation that the Court of Appeals and the Supreme Court did not sufficiently reason their decisions, the Court reiterates that, in accordance with the ECHR case law, the right to a reasoned decision includes a complex of obligations of the Court's decisions, respectively, to provide the reasons on which the decision is based, to demonstrate to the

parties that they have been heard, provide them with the opportunity to appeal against the decision and provide sufficient clarity of the reasons based on which the decision is made.

39. Although a regular court has a certain margin of appreciation when choosing arguments and admitting evidence, Article 6 (1) of the ECHR does not require a detailed answer to each and every argument provided to the court during the conduct of the proceedings (See *Suominen v. Finland*, No. 37801/97, ECtHR, Judgment of 24 July 2003, para 36; *Van de Hurk v. the Netherlands*, No. 16034/90, ECtHR, Judgment of 19 April 1994, para 61; *Jahnke and Lenoble v. France* (déc.); *Perez v. France* [GC] No. 47287/99, ECtHR, Judgment of 12 April 2004, para 81; *Ruiz Torija v. Spain*, No 18390/91, ECtHR, Judgment of 09 December 1994, para 29; *Hiro Balani v. Spain*, No. 18064/91. ECtHR, Judgment of 9 December 1994 para 27).
40. The Court considers that the Supreme Court addressed all the grounds of the appeal raised in the request for revision of the Applicants. Therefore, the Applicants had sufficient access to regular courts and sufficient opportunity to present evidence and arguments regarding their disputed question.
41. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See ECHR case, *Garcia Ruiz v. Spain*, Application No. 30544/96, 21 January 1999, para. 28).
42. The Court notes that the Applicants submitted to the Constitutional Court essentially the same grounds of appeal as they have filed at the last instance.
43. The Constitutional Court recalls that it is not a fact finding court and that the correct and complete determination of factual situation is a full jurisdiction of the regular courts. The role of the Constitutional Court is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Court cannot act as a “fourth instance court” (see case *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65; see also: case KI86/11, Applicant: *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012.
44. Moreover, the Applicants failed to prove and substantiate on constitutional basis that the proceedings before the regular courts, including the Supreme Court, were unfair or arbitrary or that their rights and freedoms were violated. The facts of the case do not show that the regular courts acted in contravention of the procedural safeguards established by the Constitution.
45. From the foregoing, the Court finds that the right of the Applicants to fair and impartial trial during the proceedings was generally respected and, more specifically, they had free access to the courts, reasoned judgments were given at various stages of the procedure. The Court further finds that, in accordance with this, the judicial protection was guaranteed.

46. Therefore, the Applicants' allegations of a violation of the right to fair and impartial trial and to judicial protection are manifestly ill-founded on constitutional basis.
47. In the light of the foregoing, the Court considers that the Applicants' Referral does not meet the admissibility requirements established in the Constitution, as further specified in the Law and provided by the Rules of Procedure.
48. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible pursuant to Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, on 6 September 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;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Selvete Gërxhaliu-Krasniqi

**President of the Constitutional Court**

Arta Rama-Hajrizi

