



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 18 December 2017
Ref. No.: RK 1171/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI56/17

Applicant

Lumturije Murtezaj

**Constitutional review of Judgment [Rev. No. 442/ 2016] of the
Supreme Court of Kosovo of 15 February 2017**

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 Lumturije Murtezaj from Gjilan (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [Rev. No. 442/2016] of the Supreme Court of Kosovo of 15 February 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's rights guaranteed by Article 21 [General Principles], Article 23 [Human Dignity] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] the Constitution, Article 47 [Individual Requests] 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 03 May 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 4 May 2017, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 8 May 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 18 October 2017, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of Referral.

Summary of facts

9. On 09 May 2007, the Applicant sustained serious injuries in a traffic accident, which was caused by the user of the insurance company "Kosova e Re" in Prishtina (hereinafter: Kosova e Re).
10. On 15 January 2008, an extrajudicial agreement was reached between Kosova e Re and the Applicant's spouse for compensation of material damage caused to the vehicle.
11. On 31 March 2010, the Applicant filed a request for compensation of material and non-material damage with the company Kosova e Re.

12. On 30 August 2010, Kosova e Re rejected the request for compensation of damage of the Applicant, reasoning *“that in the police record of the scene, there are no data that there have been injuries.”*
13. On 23 November 2010, the Applicant filed a claim for compensation of damage with the Basic Court in Gjilan against Kosova e Re, specifying the maximum amount of compensation for all types of damage she alleged was caused.
14. On an unspecified date, Kosova e Re submitted a response to the claim, where it did not challenge the factual situation concerning the traffic accident, but it emphasized that the claim for compensation of damage was statute-barred, because it was filed after the legal deadline of three (3) years, as required by the Law on Obligational Relationships of SFRY (nos. 29/78, 39/85, 57/89) (hereinafter: the LOR).
15. On 11 June 2013, the Basic Court in Gjilan through Judgment [C. No. 575/2010], partly approved the Applicant’s statement of claim for compensation of material and non-material damage and ordered Kosova e Re to compensate the respective damage to the Applicant.
16. In this Judgment, addressing the allegations of the respondent, namely Kosova e Re, as it pertains to the statute of limitations, on the basis of Articles 388 and 392 of the LOR, the Court reasoned that the statement of claim was not statute-barred, as by the filing of the first claim for damage on 31 March 2010, the 3 year deadline set by the statute of limitations was discontinued. In support of this finding, the Basic Court, among others, reasoned:

“And as in the present case from the date when the claimant filed the abovementioned claim with the respondent for compensation of damage on 31.03.2010, until the filing of the claimant’s claim on 23.11.2010 the three year deadline was not exceeded, thus we do not have a statutory limitation of the claimant’s claim.”
17. Against the Judgment of the Municipal Court in Gjilan, the Applicant and Kosova e Re filed appeals with the Court of Appeals. The Applicant requested that the Court of Appeal approves her statement of claim in its entirety, while Kosova e Re challenged the statement of claim in its entirety, continuing to allege that based on the LOR, the deadline for filing the statement of claim is statute barred.
18. On 10 October 2016, the Court of Appeals by Judgment [Ac. No. 2623/13] approved the appeal of Kosova e Re, modified Judgment [C. No 575/10] of the Basic Court in Gjilan and rejected in its entirety the Applicant’s statement of claim as ungrounded because it is statute-barred.
19. The Court of Appeals rejected as ungrounded the interpretation of the Basic Court that the statute of limitations period of three years was discontinued. On the contrary, on the basis of Articles 371 and 391 of the LOR, the Court of Appeals concluded that in the circumstances of the present case, the legal

requirements for the discontinuation of the statute of limitations period have not been met, and that the deadline for filing the statement of claim started to run from the date of the accident, at the moment when the claimant, namely the Applicant became aware of the damage. In support of the conclusion that the three year deadline for filing the statement of claim was time-barred, the Court of Appeals, among others, had reasoned:

“...The reasoning of the first instance court cannot be accepted that by filing a claim for compensation by the claimant, addressing the respondent on 31.03.2010, the statutory limitation is interrupted pursuant to Article 388 of the LOR, because according to this provision, the statutory limitation can be interrupted only by those remedies which simultaneously terminate disputed relations and enable fulfillment of the right for which the statutory limitation was applicable. By provision of Article 391 of the LOR, it is foreseen that for interruption of the statutory limitation is not sufficient if the creditor has merely given the debtor notice in writing or verbally to fulfill the obligation [...] The factual situation has been correctly determined by the first instance court, but in this factual situation the first instance court erroneously applied the substantive law and for this reason the appealed judgment of the first instance court was modified and the statement of claim filed by the claimant was entirely rejected as ungrounded.”

20. On 17 November 2016, the Applicant filed a request for revision with the Supreme Court of Kosovo against Judgment [Ac. No. 2623/13] of the Court of Appeals. The Applicant argued that the Court of Appeals erroneously interpreted the LOR.
21. On 15 February 2017, the Supreme Court of Kosovo by Judgment [Rev. No. 442/2016] rejected the request for revision of the Applicant as ungrounded, upholding the Judgment of the Court of Appeals pertaining to the interpretation of the statute of limitation periods applicable to the statement of claim.

Applicant's allegations

22. The Applicant alleges that the Judgment of the Supreme Court violated her rights guaranteed by Articles 21 [General Principles], Article 23 [Human Dignity] and Article 31 [Right to Fair and Impartial Trial] of Constitution.
23. The Applicant alleges that the Supreme Court has erroneously interpreted the LOR when it found that the statute of limitation period of three years ran from the date of the accident and the legal requirements to consider the running of this deadline as discontinued were found not to be met.
24. The Applicant alleges that the dates 15 January 2008, when Kosova e Re entered into an extrajudicial agreement with her husband pertaining to vehicle damages, and 31 March 2010, when the Applicant filed a claim for compensation of damage with Kosova e Re, are moments that meet the legal requirements to discontinue the running of the statute of limitation period, and

as a consequence, her claim for compensation of damage filed on 23 November 2010 with the Basic Court in Gjilan should have been treated as timely.

25. From the above, the Applicant concludes that *„...it results that in the present case we are not dealing with the statutory limitation of the request for compensation of the damage because the traffic accident happened on 5 September 2007; therefore, in the present case the time limit of 3 years should have been calculated from 1 January 2008, when we are dealing to the fact that the claim and the statement of claim for compensation of the damage was submitted to the court on 19 November 2010, from this follows that 3 years have passed.”*
26. The Applicant requests the Court to hold that *“...that in the present case, both court authorities, the Court of Appeals and Supreme Court as well, violated the substantive law to her detriment; therefore, I consider the decisions of these courts as unlawful and I request to allow the realization of the right to compensation of the non-material damage for the injuries which caused serious consequences - 20 % reduction of general life activity and reduction of the working activity, which are presented in the medical documentation which is contained in the case files and mentioned in the challenged Judgments, the consequences of which are still being suffered because the applicant is continuously rehabilitating.”*

Admissibility of the Referral

27. The Court first examines whether the Applicant has met the admissibility requirements established in the Constitution and as further foreseen in the Law and specified in the Rules of Procedure.
28. 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.”

29. The Court also examines whether the Applicant has met the admissibility requirements as provided by the Law. In this respect, the Court first refers to Article 48 [Accuracy of Referral] and 49 [Deadlines] of the Law, which provide:

Article 48
[Accuracy of Referral]

“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”.

Article 49
[Deadlines]

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.”

30. As to the fulfillment of these requirements, the Court finds that the Applicant filed the Referral in the capacity of an authorized party, challenging an act of a public authority, namely the Judgment of the Supreme Court [Rev. No. 442/2016] of 15 February 2017, after having exhausted all legal remedies determined by law. The Applicant has also clarified the rights and freedoms that she claims have been violated in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
31. However, the Court must further assess whether the requirements as set forth in Rule 36 [Admissibility Criteria] of the Rules of Procedure have been met.
32. Rule 36, paragraphs (1) (d) and (2) (b) and (d) of the Rules of Procedure, stipulates:
 - (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:*

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(d) the Applicant does not sufficiently substantiate his claim.”
33. The Court first recalls that the Applicant alleges that the Judgment of the Supreme Court violated her rights guaranteed by Articles 21 [General Principles], 23 [Human Dignity] and 31 [Right to Fair and Impartial Trial] of the Constitution. The allegation for violation of her right to fair and impartial trial guaranteed by Article 31 of the Constitution is based on the erroneous interpretation of the provisions of the LOR by the Court of Appeals and the Supreme Court, pertaining to the statute of limitation period applicable to her statement of claim.

34. The Court initially notes that Applicant does not substantiate her allegations for violation of Articles 21 and 23 of the Constitution, while she bases the allegations for violation of her rights to fair and impartial trial guaranteed by Article 31 of the Constitution on the erroneous interpretation of the LOR by the Court of Appeals and the Supreme Court.
35. The Court considers that the Applicant has built her case on grounds of legality, namely on the erroneous determination of the factual situation pertaining to the calculation of the statute of limitation period, constituting an allegation for the erroneous interpretation of the LOR. The Court recalls that this allegation relates to the domain of legality and as such does not fall within the jurisdiction of the Constitutional Court, and, in principle, cannot be considered by the Court.
36. Moreover, the Court considers that the Applicant did not show and prove that the proceedings before the Supreme Court were unfair or arbitrary or that her rights and freedoms protected by the Constitution have been infringed by the alleged erroneous interpretation of the provisions of the LOR. The Court emphasizes that the interpretation of the LOR is a matter of legality. No constitutional matter has been substantiated by the Applicant. (See: case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, of 8 August 2016, para. 44. and see, also case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku dhe Sami Lushtaku*, Resolution on Inadmissibility, of 15 November 2016, para. 62).
37. In addition, the Court notes that the Supreme Court reasoned in detail and specifically addressed all the Applicant's allegations regarding the erroneous interpretation of the LOR.
38. The Court first notes that the Applicant repeats the same allegations which she also raised in the request for revision which the Supreme Court took into account and reasoned, emphasizing that:

"The Supreme Court of Kosovo accepts as fair and lawful the conclusion of the second instance court when it considers that the claim of the claimant for the reimbursement of the damage was not filed within the three-year subjective period from the day the claimant became aware of the damage and the person causing the damage, as defined in Article 376 par. 1 of the LOR, from the day the claimant became aware (found out) about the damage caused and the person who caused the damage."

39. In addition, the Court notes that the Supreme Court responded in detail to the Applicant's allegations regarding the discontinuation of the statute of limitation period, reasoning that:

"... The allegations provided in the revision that the statutory limitation period for the reimbursement of the damage was terminated on the basis of Article 388 of the LOR, when the claimant in the claim of 31 March 2010

addressed the respondent for the reimbursement of the damage as well as when extrajudicial settlement was concluded on 15.1.2008 for compensation of the material damage for the car of the claimant's spouse (15.1.2008), in which car was also present the claimant. This Court found such allegations as ungrounded and, as such, they were rejected because according to this provision it is provided that the statutory limitation can be terminated only by those remedies which at same time terminate the contractual relations and enable fulfillment of the right for which the statutory limitation was applicable. Therefore, the Applicant's verbal or written request does not present a legal reference that can have an impact on termination of the statutory limitation, by the fact that, under Article 391 of the LOR, for interruption of the statutory limitation it is not sufficient to have written or verbal request of the creditor for fulfillment of the obligation by the debtor, but it is required that the creditor addresses a Court for fulfillment of debtor's obligations. In case the debtor does not respond on the creditor's call for fulfillment of the obligations for which the statutory limitation is foreseen, than there are no legal effects that can cause the interruption of statutory limitation..."

40. Therefore, the Court considers that the Applicant had the opportunity to present before the regular courts the material and legal reasons related to the dispute; her arguments were duly heard and examined by the Court of Appeals and the Supreme Court; and the proceedings, taken as a whole, were fair and the decisions rendered were reasoned in detail.
41. The Court reiterates that it is not its role to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "fourth instance", which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See: case *García Ruiz v. Spain*, ECHR no. 30544/96, of 21 January 1999, par. 28 and see, also case: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011).
42. The Court further considers that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicant with the outcome of the proceedings cannot of itself raise an arguable claim for violation of the right to fair and impartial trial. (see: *mutatis mutandis* case *Mezotur - Tiszazugi Tarsulat v. Hungary*, paragraph 21 no. 5503/02, ECtHR, Judgment of 26 July 2005).
43. The Court notes that the Applicant did not accurately substantiate her allegations for violation of her rights and did not explain how and why the Judgment of the Supreme Court may have violated her constitutional rights; she only emphasized the there has been a violation of her constitutional rights. She did not provide any *prima facie* evidence which would indicate a violation

of her constitutional rights. (see *Trofimchuk v. Ukraine*, ECtHR, paragraph 50-55, Judgment no. 4241/03, of 28 October 2010).

44. As a result, the Court considers that the Applicant has not substantiated her allegations that the relevant proceedings have been in any way unfair or arbitrary and that the challenged decision violated her constitutional rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights. (see *mutatis mutandis: Shub vs. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
45. Thus, the Court considers that the admissibility requirements established by the Rules of Procedure have not been met, because the referral must be considered as manifestly ill-founded as the presented facts do not in any way justify the allegation for a violation of the constitutional rights and as the Applicant does not sufficiently substantiate her claim for constitutional violation.
46. Accordingly, the Referral is manifestly ill-founded on constitutional basis and, in accordance with Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and Rule 36 (2) (b) and (d) and 56 of the Rules of Procedure, in the session held on 18 October 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


Gresa Caka-Nimani

President of the Constitutional Court


Arta Rama-Hajrizi

