



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

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Prishtina, 12 July 2012.  
№. ref.: RK/274/12

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI44/12

Applicant

**Bali Dellova**

**Constitutional review of the Decision of Supreme of Kosovo  
P. z. D. 96/2011 dated 23 December 2011**

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

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge and  
Ivan Čukalović, Judge

### **Applicant**

1. The Applicant is Mr. Bali Dellova from the village Krusha e Madhe, Municipality of Rahovec.

### **Challenged decision**

2. The challenged decision is the decision of the Supreme Court of Kosovo Rev. P.z.d. 96/2011 dated 23 December 2011, served on the Applicant on 25 January 2012. By this decision was rejected as ungrounded the request for extraordinary mitigation of punishment of the Applicant, who by the Judgment of the District Court in Prizren, P.

no. 36/2009 dated 7 September 2009 was found guilty for the criminal offence of Extortion from Article 267 paragraph 2 of PCKK and was sentenced to imprisonment of two (2) years and six (6) months, which punishment was certified as omnipotent by the Judgment of the Supreme Court of Kosovo, Ap. no. 422/2009 dated 23 March 2011.

### **Subject matter**

3. The subject matter is the criminal procedure that was initiated and conducted against the Applicant for the criminal offence of Extortion from Article 267 paragraph 2 PCKK, in which the Applicant was sentenced to imprisonment in duration of two (2) years and six (6) months. Applicant alleges that during the procedure was violated Article 31 of the Constitution of the Republic of Kosovo as well as Article 6 of the European Convention on Human Rights (hereinafter: the "ECHR").
4. The Applicant requests from the Constitutional Court imposition of interim measure and "*to suspend the execution of judgments up to final decision of the Constitutional Court.*"

### **Legal basis**

5. The Referral is based on the Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 16 December 2008 (hereinafter: the "Law") and the Rule 56 paragraph 2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

### **Proceeding before the Court**

6. The Applicant filed the Referral in the Constitutional Court of the Republic of Kosovo (hereinafter: the "Constitution") on 27 April 2012.
7. On 28 May 2012, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the procedure of the constitutional review of the Judgment in the case no. KI -44-12 has been initiated.
8. On 3 July 2012, after reviewing the report of the Judge Rapporteur Ivan Čukalović, the Review Panel, composed of judges Almiro Rodrigues (presiding), Snezhana Botusharova and Kadri Kryeziu, proposed to the full Court the inadmissibility of the Referral.
9. At the same time, the Review Panel proposed to the full Court to; reject the request of the Applicant for interim measures, reasoning that the Applicant did not provide convincing evidence that would justify imposing of the interim measures, necessary to avoid irreparable damage or any evidence that such a measure would have been to the public interest.

### **Summary of facts**

10. The District Public Prosecution Office in Prizren raised the indictment P.P. no. 305/2008 dated 19 January 2009 against the Applicant Mr. Bali Dellova and four other people, due to grounded suspicion that he has committed criminal offence of Extortion from Article 267 paragraph 2 in conjunction with Article 25 of PCKK.

11. The raised indictment P.P. no. 305/2008 dated 19 January 2009 was certified by the Decision of the District Court in Prizren K. A. no. 9/2009, dated 4 February 2009.
12. By the Judgment of District Court in Prizren P. no. 36/2009, dated 7 September 2009, the Applicant was found guilty for the criminal offence of Extortion from Article 267 paragraph 2 of PCKK and was sentenced to imprisonment of two (2) years and six (6) months.
13. Against the judgment of District Court in Prizren P. no. 36/2009, dated 7 September 2009, within legal time limit, on 9 October 2009, the Applicant filed appeal through his defence counsel Sylë Hoxha, challenging the judgment in all legal grounds.
14. Deciding on the appeal, the Supreme Court of Kosovo, with the judgment A. P. no. 422/2009 dated 23 March 2011, rejected as ungrounded the appeal filed by the Applicant and confirmed the Judgment of the District Court in Prizren P. no. 36/2009, dated 7 September 2009.
15. On 24 November 2011, the Applicant presented to the Supreme Court extraordinary legal remedy, the request for extraordinary mitigation of punishment.
16. The Supreme Court of Kosovo by the decision P. z.d. 96/2011 dated 23 December 2011, rejected as ungrounded the extraordinary legal remedy—the request for extraordinary mitigation of the punishment with the justification:

*“With provision of the Article 448 of CCPK, it is envisaged that the mitigation of the pronounced sentence is admissible after the judgment becomes final, while are presented new circumstances, which have not existed at the time when judgments were rendered or the court was not aware of them, and they existed, and which clearly would lead to pronouncement of a more mitigating punishment.”*

*“Since in the request is not stated any new circumstance that would clearly impact on extraordinary mitigation of punishment, this court assesses that there is no legal ground on extraordinary mitigation of punishment, thus in compliance with provision of the Article 450 paragraph 6 of CCPK, decided as in the enacting clause of this ruling.”*

### **Applicant’s allegations**

17. The appellant considers that, *“by contentious rulings and judgments were violated to him the constitutional rights guaranteed by the Constitution of the Republic of Kosovo foreseen by Article 31 (the right to fair and impartial trial), since during the trial was not proved by any evidence that the appellant has committed an offence for which he was found guilty and as well as pronounced the sentence.”*
18. According to the allegations of the Applicant, at the same time *“... were violated his rights guaranteed by European Convention for Defence of Fundamental Human Rights and Freedoms to him, as well as its protocols, respectively its Article 6, which Convention according to the Article 22 of the Republic of Kosovo is implemented directly in Kosovo.”*
19. According to the allegations of the Applicant, *“he considers that Article 7 of Code of Criminal Procedure of Kosovo was violated, since there were not confirmed and entirely specified the facts to make a decision, the courts did not confirm the facts against the defendant and those in his favour.”*

20. The Applicant addresses the Constitutional Court with the request to:

*“I wish that contentious judgments and rulings are cancelled, since in compliance with applicable law it was not proved by evidence that I have committed the offence for which I am charged of, and that the trial is impartial, the decision which will be made to be based on evidence obtained and administered in compliance with the constitution, conventions and applicable law.”*

*“In compliance with the Law on Constitutional Court of the Republic of Kosovo, Article 27, having into consideration that judgments are of final form and executable and that the appellant is being invited to serve the sentence, and until the court decides we want to pronounce interim measure and to suspend the execution of judgments until the Constitutional Court renders definitive decisions.”*

### **Preliminary assessment of admissibility of the Referral**

21. The Applicant alleges that the basis for his request Article 31 (The right to fair and impartial trial) of the Constitution as well as Article 6 of ECHR (The right to fair and impartial trial).
22. Article 48 of the Law on Constitutional Court of the Republic of Kosovo foresees:
- “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. According to the Constitution, the Constitutional Court is not a court of appeal, where are reviewed the decisions rendered by regular courts. The role of regular courts is to interpret and apply the respective rules of the procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz against Spain [GC], no. 30544/96, paragraph 28, European Court for Human Rights [ECHR] 1999-I).
24. The Applicant did not submit any *prima facie* evidence, which shows that his constitutional rights were violated (see, Vanek against Republic of Slovakia, Decision of ECJ regarding admissibility of the request, no. 53363/99 dated 31 May 2005). The Applicant did not show in which way the Article 31 of the Constitution and Article 6 of ECHR (Right to fair trial), Protocol 1, ECHR support his Referral, as it is foreseen in Article 113.7 of the Constitution and Article 48 of the Law.
25. The Applicant claims that his right (Right to fair and impartial trial) was violated by wrong application of the law by the regular courts, by not specifying clearly in which way were violated his constitutional right by this judgment.
26. In this case, the Applicant was given many opportunities to present the case and to challenge the interpretation of the law, which he considers is wrong in the District Court in Prizren and in the Supreme Court of Kosovo. After the review of the procedure in entirety, the Constitutional Court has not determined that the respective procedures were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub against Lithuania, ECHR Decision on admissibility of Referral no. 17064/06, dated 30 June 2009).
27. Finally, in this submission were not met the requirements for admissibility. The Applicant failed to mention and support by evidences the allegation that his constitutional rights and freedoms were violated by the challenged decision.

28. From this comes out that the Referral is manifestly ill-founded pursuant to the Rule 36 (2b) of the Rules of Procedure, which foresees that „ *The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights.*”

**FOR THESE REASONS**

Constitutional Court, pursuant to Article 48 of the Law and the Rule 36 (2b) of the Rules of Procedure, on 3 July 2012, unanimously:

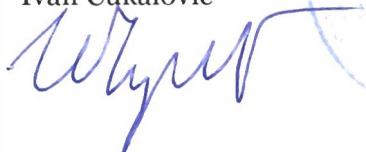
**DECIDES**

- I. TO REJECT the Referral as inadmissible;
- II. TO REJECT the request for interim measures;
- III. 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 on the Constitutional Court; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Ivan Čukalović



Prof. Dr. Enver Hasani

