



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

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Pristina, 20 October 2014  
Ref.no.: RK713/14

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI78/14

Applicant

**Mentor Paçak**

**Constitutional Review of the  
Decision PN. no. 637/2013 of the Court of Appeals,  
dated 16 October 2013**

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

composed of

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
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. Mentor Paçak, from Prizren (hereinafter, the Applicant), represented by Mr. Ibrahim Paçak, from Prizren.

### **Challenged decision**

2. The applicant challenges Decision PN. no. 637/2013 of the Court of Appeals, dated 16 October 2013, which allegedly was served on him in November 2013.

### **Subject matter**

3. The subject matter is constitutional review of the Decision of the Court of Appeals, but the Applicant has not mentioned any constitutional provisions.

### **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 47 of Law No. 03/121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

### **Proceedings before the Constitutional Court**

5. On 5 May 2014, the Applicant submitted his referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 10 June 2014, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 18 June 2014, the Court notified the Applicant on the registration of the Referral.
8. On 19 June 2014, the Court sent a copy of the Referral to the Court of Appeals.
9. On 15 September 2014, the President of the Court replaced Judge Rapporteur Robert Carolan with Judge Almiro Rodrigues.
10. On 16 September 2014, 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**

11. On an unspecified date, the Applicant has submitted a request to the President of the Basic Court in Prizren to postpone the commencement of serving the sentence of imprisonment, adjudicated by the Judgment No. P. nr. 49/2011 of the District Court in Prizren, dated 8 April 2011, which became final on 22 March 2012.
12. On 29 May 2013, the Basic Court in Prizren (Decision Ped. no. 231/2013) approved the Applicant's request for postponement of the commencement of serving the sentence of imprisonment for three months, so that the commencement of the sentence was postponed until 29 August 2013.

13. On an unspecified date, the Applicant submitted once again a request to the President of the Basic Court in Prizren to postpone the commencement of serving the sentence of imprisonment.
14. On 20 September 2013, the Basic Court in Prizren (Decision PED. no. 223/2013) rejected the Applicant's request to postpone the commencement of serving the sentence as ungrounded.
15. On 16 October 2013, the Court of Appeals (Decision PN. no. 637/2013) rejected the Applicant's complaint as ungrounded and upheld the Decision of the Basic Court in Prizren, dated 20 September 2013. The Court of Appeals found that “[...] Since the convict has not provided any evidence substantiating the claim on postponement, based on which the Court would assess the fulfilment or nonfulfillment of the legal requirement referred to in Article 20 par. 1 item 1.4 of the LEPS, this Court concluded that the appealed decision of the first instance on rejecting the plea for postponement of the sentence was rendered in accordance with the procedural provisions, applying the provisions of LEPS in a rightful and full manner, and these stances are accepted by this Court too [...]”.

### **Applicant's allegations**

16. The Applicant has not mentioned any violation of the provisions of the Constitution; he only requested the Court to pardon his sentence.

### **Admissibility of the Referral**

17. The Court observes that, in order to be able to adjudicate the Applicant's Referral, firstly it is necessary to assess whether the Applicant has fulfilled the admissibility requirements, laid down in the Constitution and further specified in the Law and Rules of Procedure.
18. In this respect, the Court refers to Article 49 of the Law, which provides:

*“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 [...]”.*
19. The Court refers also to Rule 36 (1) b) of the Rules of Procedure, which provides:

*“(1) The Court may only deal with Referrals if: b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or [...]”.*
20. The Court observes that the final Decision PN. no. 637/2013 of the Court of Appeals was rendered on 16 October 2013 and served on the Applicant in November 2013. The Applicant submitted the Referral to the Court on 5 May 2014, which is more than 4 months from the date upon which the Applicant has been served with the Decision of the Court of Appeals.

21. For the foregoing reasons, the Court concludes that the Referral is out of time and should be declared as inadmissible pursuant to Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court pursuant to Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, in its session held on 16 September 2014, unanimously

### DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision immediately effective.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Prof. Dr. Enver Hasani