



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

Prishtina, 10 January 2017  
Ref.no: RK1032/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI137/15**

Applicant

**Shefki Qerimi**

**Constitutional Review of the Judgment Pml. No. 114/2015 of the Supreme  
Court of Kosovo, of 22 June 2015**

**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 Mr. Shefki Qerimi from village of Dumnicë, municipality of Podujeva (hereinafter, the Applicant). He is represented by Ms. Flutra Hoxha, lawyer practicing in Prishtina.

## **Challenged Decision**

2. The Applicant challenges the Judgment (Pml. No. 114/2015, of 22 June 2015) of the Supreme Court through which his request for protection of legality was rejected as ungrounded.
3. The challenged decision was served on the Applicant on 15 October 2015.

## **Subject Matter**

4. The subject matter is the constitutional review of the challenged decision which has allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law]; Article 29 [Right to Liberty and Security]; Article 31 [Right to Fair and Impartial Trial]; Article 53 [Interpretation of Human Rights Provisions]; and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereafter: the Constitution); his rights guaranteed by Article 5 [Right to Liberty and Security] and Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, the ECHR); as well as his right guaranteed by Article 7 of the Universal Declaration on Human Rights (hereinafter, UDHR).

## **Legal basis**

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 9 November 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 8 December 2015, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges, Altay Suroy (presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
8. On 31 May 2016, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.
9. On 20 October 2016, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of Facts**

10. On 8 July 2012, a traffic accident occurred whereby three individuals have attained grave bodily injuries.

11. On 26 April 2013, the Basic Prosecution in Prishtina filed a criminal charge against the Applicant based on the suspicion that he had committed the criminal offence of “*Endangering the public safety*” and “*Refraining from providing help to persons injured in traffic accidents.*”
12. On 11 November 2013, the Basic Court in Prishtina (Judgment, P. No. 1781/13) found the Applicant guilty of committing the aforementioned criminal offences and sentenced him to imprisonment of nine (9) months. In addition, the Applicant was prohibited to drive B category vehicles for a period of one (1) year.
13. The Applicant filed an appeal against the Judgment of the Basic Court with the Court of Appeal due to substantial violations of the provision of criminal procedure, violations of material law, erroneous and incomplete ascertainment of the factual situation as well as due to the decision on sentence. He requested from the Court of Appeal to acquit him for lack of evidence or to remand the case for retrial.
14. The Basic Prosecution in Prishtina also filed an appeal against the Judgement of the Basic Court with the Court of Appeal due to the decision on sentence requesting that the sentence is replaced with a more severe one.
15. On 18 November 2014, the Court of Appeal (Judgment, PA1. no. 98/2014) rejected, both, the appeal of the Applicant and the appeal of the Basic Prosecution in Prishtina as ungrounded. It reasoned as follows:

*“[...] The Court of Appeal considers that the Judgment of the first instance court does not contain essential violations of the criminal procedure law as alleged by the defence counsel of the defendant, because the enacting clause of the challenged Judgment is clear, concrete and contains the criminal offence for which the accused was found guilty of, the facts and circumstances that constitute the nature of the criminal offence, as well as the facts and circumstances on which the application of the respective provisions of the Criminal Code depends on [...].”*
16. The Applicant filed a request for protection of legality with the Supreme Court due to violations of the provisions of criminal procedure and criminal law.
17. On 22 June 2015, the Supreme Court (Judgment, Pml. no. 114/2015) rejected the Applicant’s request for protection of legality and held as follows:

*“[...] this Court considers that in the concrete case, the challenged Judgments were not rendered with essential violations of the provisions of criminal procedure or criminal law, thus approving in entirety the legal stance expressed in the challenged judgments related to the criminal liability of the convicted, and also due to the fact that, based on the administered pieces of evidence, it was ascertained that the actions of the convicted contain all the essential elements of the criminal offences for which he was found guilty.”*

## **Applicant’s allegations**

18. The Applicant alleges that the regular courts violated his rights as guaranteed by Articles 24, 29, 31, 53 and 54 of the Constitution; his rights guaranteed by Articles 5 and 6 of the ECHR; and, his right guaranteed by Article 7 of the UDHR. He alleges that the regular courts violated such rights by *“failing to act and fairly review the legal matter in conformity with the positive laws.”*
19. The Applicant states that he *“has not committed the criminal offences for which he was accused of and sentenced.”* In this regard, he claims that the decision on the sentence is *“illegal, erroneous, severe and unreasoned, for a criminal offence for which there is no sufficient evidence proving that it was committed by the accused.”*
20. Furthermore, the Applicant claims that the regular courts have violated *“the principle of freedom and security, the principle of presumption of innocence from the initiation of the criminal investigations, the principle of equality of arms [...] the principle in Dubio pro reo and the rights of the defence”*.
21. The Applicant concludes by requesting the following from the Court:
 

*“To declare the Applicant’s Referral as admissible;  
To ascertain the violation of the individual rights of the Applicant [...] in the court proceedings in the Basic Court in Prishtina, Court of Appeals of Kosovo, and the Judgment rendered by the Supreme Court of Kosovo; and  
To determine any right or responsibility for the parties in the Referral which this honourable Court considers as legally grounded and reasonable.”*

### **Assessment of the admissibility of the Referral**

22. The Court first examines whether the Applicant has met the admissibility requirements as foreseen by the Constitution and further specified by the Law and Rules of Procedure.
23. In this respect, the Court refers to Articles 113.1 and 113.7 of the Constitution, which provide:
 

*“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.”*
24. The Court also refers to Article 48 of the Law, which establishes that:
 

*“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.”*

25. Furthermore, the Court refers to Rules 36 (1) (d) and 36 (2) (b) and (d) of the Rules of Procedure, which provide that:

*“(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, [...]*

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

26. In this regard, the Court notes that the Applicant has submitted the Referral as an individual, and as such he is an authorized party. The Referral is submitted within the period provided by Article 49 of the Law, and after exhausting all the legal remedies. Therefore, the Court considers that all formal admissibility criteria have been met, in order for it to review the Referral.
27. As referred to above, in substance, the Applicant complains that the Basic Court in Prishtina has sentenced him for a crime that he did not commit. Moreover, he claims that the Court of Appeal and the Supreme Court allegedly confirmed an “*illegal, erroneous, severe and unreasoned*” decision of the Basic Court in Prishtina and thus violated his rights guaranteed by Articles 24, 29, 31, 53 and 54 of the Constitution; his rights guaranteed by Article 5 and 6 of the ECHR; and his right guaranteed by Article 7 of the UDHR.
28. The Court also recalls the Applicant’s complaint that the regular courts have violated his aforementioned rights by not reviewing fairly the legal matter and by taking a decision to sentence him without sufficient evidence to support that end. He further referred to violations of various principles, such as the principle of freedom and security, presumption of innocence and in dubio pro reo, without providing any further reasoning as to how and why such principles have been violated by the regular courts.
29. In this respect, the Court notes that the Applicant was indicted for committing two criminal offences and thus found guilty and sentenced by the Basic Court in Prishtina with nine (9) months imprisonment and an additional measure of one (1) year driving-ban.
30. Furthermore, the Court notes that following the Applicant’s appeal and his request for protection of legality, the Court of Appeal and the Supreme Court, respectively, have rejected his allegations of violation of criminal law and criminal procedure law by fully supporting the Judgment of the Basic Court in Prishtina. Both instances have responded to all allegations of violations of criminal law and criminal procedure law raised by the Applicant.

31. In this respect, the Court finds that the allegations that are being raised by the Applicant before this Court are questions of legality and not of constitutionality.
32. The Constitutional Court does not have the jurisdiction to decide whether an Applicant was guilty of committing a criminal offence or not. Nor does it have jurisdiction to assess whether the factual situation was correctly determined or to assess whether the judges of the regular courts have had sufficient evidences to determine the guilt of an Applicant.
33. In relation to this, the Court emphasizes that it is not its task to deal with errors of fact of law (legality) allegedly committed by the Supreme Court or any other court of lower instances, unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution (constitutionality).
34. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution.
35. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
36. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegation of violation of criminal law and criminal procedure law allegedly committed by the Court of Appeal when it rejected his appeal as ungrounded and confirmed the Judgment of the Basic Court in Prishtina. The Applicant had argued before the Supreme Court that "*the judgements are based on inadmissible pieces of evidence*"; "*enacting clauses of the judgments are unclear*"; "*the State Prosecutor [...] did not present his closing statement*"; "*the charge has been exceeded*" and that the decisions were unlawfully corrected two times for clerical errors.
37. In response to such allegations, the Supreme Court reasoned as follows:

*[...] The Supreme Court of Kosovo considers that the abovementioned allegations are ungrounded due to the following reasons:  
[...] the minutes of 07 November 2013, based on which it is clearly seen that the Prosecutor [...] has provided her closing statement. [...] The fact that the first instance court renders two decision on the correction of the*

*judgment [...] we are dealing with harmless errors [...] which do not change the essence of the criminal offence.  
[...] the challenged Judgments were not rendered with essential violations of the provisions of criminal procedure or criminal law [...]. [...] based on the administered pieces of evidence, it was ascertained that the actions of the convicted contain all the essential elements of the criminal offences for which he was found guilty.”*

38. In relation to this, the Court notes that the reasoning in the Judgment of the Supreme Court referring to Applicant’s allegations of violations of the criminal law and criminal procedure law is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal and the Basic Court in Prishtina have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
39. Therefore, in the present case, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violations of the constitutional rights invoked by him and that the latter has not sufficiently substantiated his claim.
40. Consequently, the Referral is manifestly ill-founded and it should be declared inadmissible pursuant to Rules 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) d), (2) d) and 56 of the Rules of Procedure, in the session held on 20 October 2016, unanimously

## DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately;

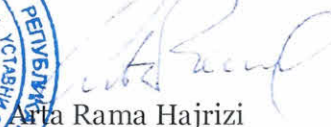
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama Hajrizi